

The Indian Law Reports

APPELLATE CIVIL

Before *Daya Krishan Mahajan, J.*

NIRANJAN SINGH,—Appellant.

versus

KARAM SINGH AND OTHERS,—Respondents

Regular Second Appeal No. 1671 of 1959

Punjab Pre-emption Act (1 of 1913)—S. 3(1)—Land—Definition of—Whether includes well and tube-well—Person entitled to pre-empt sale purchasing share of tube-well from the vendee—Whether deemed to have waived his right of pre-emption.

1965

October 21st,

Held, that 'well' and 'tube-well' are land within the definition of 'land' in section 3(1) of the Punjab Pre-emption Act, 1913, and their sale is, therefore, pre-emptible.

Held, that if a person entitled to pre-empt the sale of land purchases rights in the tube-well sold with the land from the vendee, he shall be deemed to have waived his right of pre-emption because he has purchased a part of the sold property from the vendee and thus recognised the validity of the sale in favour of the vendee.

Regular Second Appeal from the decree of the Court of Shri Parshotam Sarup, District Judge, Jullundur, dated the 7th day of July, 1959, affirming that of Shri Jagdish Chander, Sub-Judge, 1st Class, Jullundur, dated the 19th January, 1959, dismissing the Plaintiff's suit with costs. The lower Appellate Court ordered the parties to bear their own costs.

K. C. NAYYAR, ADVOCATE, for the Appellants.

PURAN CHAND, ADVOCATE, for the Respondents.

JUDGMENT

Mahajan, J. MAHAJAN, J.—This second appeal is directed against the concurrent decisions of the Courts below dismissing Niranjn Singh's suit for pre-emption.

The land in dispute was sold along with a well plus one-fifth share in a tube-well for Rs. 7,000 to Karam Singh and Ganda Singh, defendants Nos. 1 and 2, by defendant No. 3, Lehna Singh. Two suits were filed to pre-empt this land, one by Niranjn Singh, the present appellant, and the other by Joginder Singh. Both claimed right of pre-emption on the ground that they were nephews of the vendor, Lehna Singh. A statement was made by both of the pre-emptors (with which the vendees agreed) that their right of pre-emption was equal and decree be passed in favour of both in equal shares. This statement was of course subject to the rider that they had the right of pre-emption. That is implicit in the statement. On the 19th of January, 1959, Joginder Singh's suit was decreed, but Niranjn Singh's suit was dismissed on the ground that he had waived his right of pre-emption. Against these decisions two appeals were preferred, one by the vendees against the vendor, and Joginder Singh and Niranjn Singh (Civil Appeal No. 18 of 1959) and the other by Niranjn Singh against the vendees, the vendor and Joginder Singh (Civil Appeal No. 24 of 1959). Both these appeals were rejected by the lower appellate Court. The vendees appear to be satisfied with the decision of the lower appellate Court and have not come up in further appeal, whereas Niranjn Singh has come up in second appeal to this Court.

Mr. K. C. Nayyar, learned counsel for the appellant, in the first instance, relied on the statement made in the case that the right of both the pre-emptors was equal and a decree for possession by pre-emption be passed in favour of both of them. As I have already said, this statement was made only in recognition of equal right of both the pre-emptors. This statement did not imply that both the pre-emptors were entitled to a decree even if they had no right of pre-emption or even if they had waived their right of pre-emption. The trial of the suit would have been meaningless if the vendees had agreed unconditionally to a decree being passed in favour of the plaintiffs. Therefore,

I am unable to agree that in view of the said statement the appellant is entitled to a decree for possession by pre-emption.

Niranjan Singh
versus
Karam Singh
and others

Mahajan, J.

The second contention of the learned counsel for the appellant is that there is no waiver, because a tube-well is not land. The Courts below have held that Niranjan Singh has waived his right because he purchased rights in the tube-well from the vendees and, therefore, he recognised the validity of the sale in favour of the vendees and could not pre-empt the same, because his act in purchasing the tube-well would amount to waiver of his right of pre-emption. This conclusion is not disputed by the learned counsel for the appellant; what is disputed is that the sale of the tube-well is not sale of land and what can be pre-empted is only agricultural land or village immovable property or urban immovable property. In the present case we are not concerned with the last two categories of property. We are only concerned with land. 'Land' has been defined in section 3(1) of the Punjab Pre-emption Act, 1913 (1 of 1913) as meaning "land as defined in the Punjab Alienation of Land Act, 1900 (as amended by Act 1 of 1907)". The definition of 'land' is given in section 2 of the Punjab Alienation of Land Act and its relevant part is as follows:—

"The expression 'land' means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes—

- (a) the sites of buildings or other structures on such land;
- (b) * * * * *
- (c) * * * * *
- (d) * * * * *
- (e) any right to water enjoyed by the owned or occupier of land as such;
- (f) * * * * *
- (g) * * * * *

The question whether sale of well is sale of land is not *res integra*. In *Imam Din v. Mahka and others* (1),

(1) 62 P.R. 1891.

Niranjan Singh
versus
 Karam Singh
 and others

Mahajan, J.

Plowden and Roe, JJ., held that "the land on which the well is sunk is used 'for purposes subservient to agriculture', and the well itself is a 'structure on such land', within the definition of 'land' in section 4, sub-section (1), Punjab Tenancy Act, 1887." The definition of 'land' given in Punjab Tenancy Act is as follows:—

"'land' means land which is not occupied as the site of any building in a town or village and is not occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures on such land".

This definition is more or less in consonance with the definition of 'land' in the Punjab Alienation of Land Act. Therefore, 'well' would be 'land' within the meaning of the definition of 'land' in the Punjab Pre-emption Act. The other decision in point is the decision in *Dhani Khan, Mani Khan and Ghani Khan v. Mahtab Khan, Phallu Khan and Gulab Khan* (2), by Sir Meredyth Plowden. In this case the question was whether the suit was a land suit or an unclassified suit. The learned Judge following the decision in *Imam Din's case* held that:—

"It is of no consequence, as the District Judge appears to have thought, that the well in suit was sunk in a plot of land to which the plaintiffs lay no claim, as being no part of their holding. According to the definition of land in section 4 of the Punjab Tenancy Act, 1887, the well is constructively 'land' and this suit relating to the well, relates to land within the meaning of section 3 sub-section (2) of the Punjab Courts Act, XIII of 1888."

No decision to the contrary has been brought to my notice. The only decision relied upon by the learned counsel for the appellant is *Abdul Qaiyum-Samunder Khan v. Mohammad Haroon Mohammad Hayat Khan and others* (3). In this decision the question for consideration was whether a right to water was land. We are not concerned with this decision, though according to the definition in

(2) 40 P.R. 1893.

(3) 199 I.C. 329.

the Punjab Alienation of Land Act a right to water would also be land *vide* clause (e) of section 2 of that Act. For the foregoing reasons I am unable to agree with the contention of the learned counsel that the tube-well in question is not land and thus is not liable to pre-emption. This argument was raised for the contention that if land was not purchased by the pre-emptor from the vendees, there would be no question of waiver. I have already held that what was purchased by the plaintiff was land and, therefore, the plaintiff-appellant must be deemed to have waived his right of pre-emption because he purchased a part of the sold property from the vendees.

Niranjan Singh
versus
 Karam Singh
 and others

 Mahajan, J.

For the reasons recorded above this appeal fails and is dismissed. There will, however, be no order as to costs in this Court.

B.R.T.

REVISIONAL CIVIL

Before A. N. Grover, J.

KASHMIR KAUR WIFE AND GOGI, DAUGHTER OF
 MANOHAR SINGH,—*Petitioners*

versus

MANOHAR SINGH,—*Respondent*

Civil Revision No. 751 of 1965

Specific Relief Act (XLVII of 1963)—Ss. 2(a) and 38—Obligation—Meaning of—Suit for perpetual injunction restraining defendant 1 from proclaiming that she was the wife of the plaintiff and defendant 2 from proclaiming that she was his daughter—Whether maintainable after decision in proceedings under S. 488, Code of Criminal Procedure, that defendant 1, was the wife and defendant 2, was the daughter of the plaintiff—Injunction against an infant—Whether can be granted.

1965

 October, 26th

Held, that the word 'obligation' in section 2(a) of the Specific Relief Act, 1963, is of wide import and cannot be restricted merely to contracts or property which appear in section 38 of the Said Act.

Held, that a suit for a perpetual injunction restraining defendant 1, from proclaiming that she was the wife of the plaintiff and defendant 2, from proclaiming that she was the daughter of the plaintiff,