

(7) The trial Magistrate totally overlooked the fact that the offence under section 5 of the Explosive Substances Act being an offence under a law other than the Indian Penal Code comes under Part II of the First Schedule of the new Code (which corresponds to 2nd Schedule of the old Code) and since such an offence was made punishable with imprisonment for a term more than 7 years, it becomes triable by the Court of Session on the entry in Part II of the First Schedule of the new Code. Since I hold that the case is exclusively triable by the Court of Session and that the trial Magistrate was not competent to try this offence, I set aside the order of the Courts below in exercise of the *suo motu* powers of revision. The case being triable exclusively by the Court of Session, the trial Magistrate will have to follow the provisions regarding an enquiry into a case triable by the Court of Session and if he finds sufficient ground to commit the petitioner to the Court of Session at Hissar to stand his trial, he shall order accordingly. The petitioner to appear in the Court of the Magistrate concerned on 17th July, 1981.

N. K. S.

Before S. S. Sandhwalia C.J. and S. P. Goyal, J.

CHARANJIT LAL,—Appellant.

versus

RAM SARUP and others.—Respondents.

Civil Regular Second Appeal No. 738 of 1969

May 29, 1981.

Punjab Security of Land Tenures Act (X of 1953)—Section 17-A—Sale of land pre-empted by a tenant of the vendor—Suit by the tenant pending when heirs of the vendor having preferential right also filed a suit to pre-empt the same sale—Tenant's suit decreed on compromise—Such acquisition of property by the tenant—Whether in recognition of his right of pre-emption and protected by Section 17-A as against the other pre-emptors—Doctrine of lis pendens—Whether applicable.

Charanjit Lal v. Ram Sarup and others (S. P. Goyal, J.)

Held, that a perusal of section 17-A of Punjab Security of Land Tenures Act, 1953 when viewed in the light of the two amending provisions leaves no room for doubt that the intention of the Legislature in enacting these provisions was only to prevent the ejection of the tenant by resorting to the right of pre-emption by the relations of the vendor or his co-sharers. Had the intention of the Legislature been to give an absolute protection to the tenant against the right of pre-emption or to confer upon him a better right of pre-emption, the Legislative would have certainly put him at No. 1 in the category of persons entitled to pre-empt the sale. So the consent decree in favour of the tenant cannot be said to have been passed in recognition of his equal or superior right of pre-emption and he cannot be, therefore, regarded as anything more than the successor in interest of the original vendee, having no right to defend the suit except on the pleas that were open to such vendee himself. The *pendente lite* transfer in his favour effected by means of the consent decree would thus be hit by the rule of *lis pendens* and the plea under section 17-A of the Land Tenures Act would not be available to him so as to defeat the superior right of pre-emption.

(Paras 4 and 6).

Regular Second Appeal from the decree of the Court of Shri S. R. Seth, II Additional District Judge, Karnal, dated the 7th day of December, 1968, affirming that of the Court of Shri Raj Kumar Gupta, H.C.S. Sub-Judge, I Class, Karnal, dated the 29th March, 1963, dismissing the suit of the plaintiff and leaving the parties to bear their own costs.

M. S. Jain, Advocate with V. K. Gupta, V. K. Jain, Advocates, for the Appellant.

N. C. Jain, C. L. Ghai, S. S. Jain with him, for the Respondents.

JUDGMENT

S. P. Goyal, J.—

(1) The sole question on which this regular second appeal has been referred to this larger Bench is as to whether the land sold by the vendor not to his tenant but acquired by him through pre-emption decree would be covered by the provisions of section 17-A of the Punjab Security of Land Tenures Act, and, therefore, the suit for pre-emption by a person having admittedly a better right of pre-emption than the tenant would not be competent.

(2) The land in dispute was sold by Dewan Chand, Hukam Chand and their sister Smt. Shanti Devi to Ram Sarup and his three brothers—*vide* sale deed, dated March 8, 1965. Budhu, respondent

No. 5, filed a suit for possession of this land by way of pre-emption on the ground that he was holding the said land as tenant at the time of its sale under the vendor which was decreed on compromise on November 4, 1966. In the meanwhile, prior to the date of the said decree, Charanjit Lal, appellant, son of Dewan Chand, vendor, and nephew of other two vendors filed the present suit to pre-empt the said sale which was dismissed by the trial Court on the ground that the suit land having been transferred in favour of the tenant in recognition of his right of pre-emption and the rule of *lis pendens* being not applicable, the sale in favour of the tenant was protected by the provisions of section 17-A of the Land Tenures Act and, therefore, not pre-emption. On appeal, the view of the trial Court was upheld by the learned Additional District Judge, Karnal,—*vide* judgment dated December 7, 1968 which led to the filing of this second appeal by the plaintiff.

(3) The learned counsel for the appellant assailing the correctness of the view of the courts below contended that the provisions of section 17-A of the Land Tenures Act save only the sale made in favour of tenant and the same cannot be extended to acquisition of the property acquired by a tenant in exercise of his right of pre-emption under the Punjab Pre-emption Act (hereinafter called the Pre-emption Act). The learned counsel for the tenant, on the other hand, argued that once the land stood transferred to the tenant in exercise of his right of pre-emption under the compromise decree, he is deemed to have been substituted in place of the original vendee and it is open to him to put up all the defences to defeat the suit of pre-emption which would have been available to him if the sale was made primarily in his favour. In the alternative he argued that once the right of pre-emption has been exercised successfully by the tenant without following the procedure contained in section 28 of the Pre-emption Act, no second decree for the right of pre-emption can be passed.

(4) So far as the second argument of the learned counsel for the respondent is concerned, it creates no difficulty because this point stands concluded by the Supreme Court in *Bishan Singh and others v. Khazan Singh and another* (1), wherein a similar contention was rejected with the following observation :—

“Nor can we accept the argument of the learned counsel for the appellants that section 28 precludes the court from

(1) A.I.R. 1958 S.C. 838.

Charanjit Lal v. Ram Sarup and others (S. P. Goyal, J.)

giving a decree for pre-emption in a case where the two suits were not joined together but one of the suits was decreed separately. Section 28 enacts a convenient procedure, but it cannot effect the substantive rights of the parties. We do not see that, if the plaintiffs were entitled to a right of pre-emption, they would have lost it by the appellants obtaining a decree before the plaintiffs instituted the suit, unless it be held that the decree itself had the effect of substituting them in place of the original vendees. We cannot, therefore, hold that the plaintiffs suit is in any way barred under the provisions of the Act."

As regards the first and the main question, a perusal of section 17-A of the Land Tenures Act provides that notwithstanding anything to the contrary contained in the Punjab Pre-emption Act, a sale of land comprising the tenancy of a tenant made to him by the landowner shall not be pre-emptible under the Punjab Pre-emption Act and no decree of pre-emption passed after the commencement of the said Act in respect of any such sale of land shall be executed by any court. This provision in the Land Tenures Act was introduced by the Punjab Security of Land Tenures (Amendment) Act, 1959 with the object of preventing the ejection of the tenants in a circuitous way which would be evident from the following statement of the objects and reasons contained in the bill:—

"It has come to the notice of Government that land-owners who are not competent to eject their tenants from lands comprising their tenancies under the Punjab Security of Land Tenures Act, 1953, are circumventing the provisions of that Act by executing *mala-fide* transactions of sale and mortgages with possession in respect of such lands in favour of the tenants. Subsequently such a sale is pre-empted under the Punjab Pre-emption Act, 1913 by an eligible pre-emptor with the connivance of the vendor (erstwhile landlord) and the pre-emptor takes possession of the land comprising the tenancy; likewise, such a mortgage is redeemed by the mortgagor (erstwhile landlord) and in either case the tenant is duped and deprived of his tenancy. Government have decided to safeguard the rights and interests of tenants against such *mala-fide* transactions; their tenancies will not be disturbed, and if

these have been disturbed already, they will be restored to them by a summary procedure. The tenant (erstwhile vendee) will have also the option to claim, by a summary procedure, restoration of rights of ownership in respect of the pre-empted land on payment of the price paid to him by the pre-emptor."

When this amendment was introduced, a tenant had no right of pre-emption and this right was conferred upon him for the first time by Act No. 10 of 1960 and in the order of preference he was placed at No. 5 after the relations and co-sharers of the vendor. When these two amending provisions are viewed together, no doubt is left about the intention of the Legislature in enacting the provisions of Section 17-A of the Land Tenures Act which was only to prevent the ejection of the tenant by resorting to the right of pre-emption by the relations of the vendor or his co-sharers. Had the intention of the Legislature been to give an absolute protection to the tenant against the right of pre-emption or to confer upon him a better right of pre-emption, the Legislature would have certainly put him at No. 1 in the category of persons entitled to pre-emption the sale. So the Legislature in spite of the provisions of section 17-A of the Land Tenures Act placed the tenant in the line of pre-emptors only at the fifth place and the provisions of section 17-A, therefore, cannot be interpreted so as to frustrate the intention of the Legislature.

(5) The learned counsel for the respondent does not dispute that if the two suits filed by the present appellant and the tenant were decided together the appellant would have got the first right of pre-emption and the provisions of section 17-A would not have come into play. He, however, seeks its protection on the ground that by transfer of the land by the vendee in favour of the tenant in recognition of his right under the compromise decree, the latter is deemed to have been substituted in place of the vendee and is entitled to defeat any right of pre-emption by invoking all the pleas which would have been open to him as if he were the original vendee. In support of his contention, he relied on a Full Bench decision of the Lahore High Court in *Mt. Sant Kaur v. Teja Singh and others* (2), and the decision of the Supreme Court in *Bishan*

Charanjit Lal v. Ram Sarup and others (S. P. Goyal, J.)

Singh's case (supra). Both these decision, however, in our view, do not support his contention. So far as *Mt. Sant Kaur's case* (supra) (Full Bench) is concerned, the learned counsel relied on the following observations:—

“* * * * *

* * Where the subsequent vendee has still the means of coercing, by means of legal action, the original vendee into surrendering the bargain in his favour, a surrender as a result of a private treaty, and out of Courts, in recognition of the right to compel such surrender by means of a suit cannot properly be regarded as a voluntary transfer so as to attract the application of the rule of *lis pendens*. The correct way to look at the matter, in a case of this kind, is to regard the subsequent transferee as having simply been substituted for the vendee in the original bargain of sale. He can defend the suit on all the pleas which he could have taken had the sale been initially in his own favour.”

These observations, when read out of the context, appear to support his contention but when the whole judgment is read, it is revealed that the Full Bench has expressly approved the earlier Full Bench in *Mool Chand v. Ganga Jal* (3), where it was held that where a sale is made by the vendee in favour of a person with a right of pre-emption either equal or superior to that of the plaintiff in recognition of such right he is deemed to be substituted in position of the vendee and entitled to defend the sale on all the pleas which he could have taken had the sale been initially in his favour. Both these Full Bench cases were approved by the Supreme Court in *Bishan Singh's case* (supra). The principle enunciated in these decisions, therefore, would be available to the subsequent vendee who has purchased the land during the pendency of the suit if the transfer had been made in his favour in recognition of his equal or superior right of pre-emption than the plaintiff. The exception to the rule of *lis pendens* in the case of a subsequent vendee with equal or superior right of pre-emption was made on the ground that it did not apply to assertion of rights which existed prior to the

(3) A.I.R. 1930 Lah. 356.

institution of the pending suit and that the pre-emptor was not in a worse position without asserting his right privately than when he asserted it by suit. It was because of this reason that in the later Full Bench case of *Mt. Sant Kaur*, it was held that where at the time of transfer, limitation for instituting the suit for pre-emption by the subsequent vendee and expired and he had lost all use of coercive machinery of law for compelling the vendee to transfer the property in recognition of his right of pre-emption the transfer in his favour by the vendee must be regarded as voluntary transfer of such title as vendee had himself acquired under the original sale so as to attract the principle of *lis pendens* and that in such a case the transfer has not the effect of substituting the subsequent transferee in place of the vendee so as to entitle him to defend the suit on pleas which would have been available to him if the sale had been initially made in his favour.

(6) In the present case the right of pre-emption of all the subsequent vendees as tenants is admittedly inferior to that of the appellant. So the consent decree in favour of the tenant cannot be said to have been passed in recognition of his equal or superior right of pre-emption than that of the appellant and as such he cannot be regarded as anything more than the successor-in-interest of the original vendee, having no right to defend the suit except on the pleas that were open to such vendee himself. Hence the *pendente lite* transfer in his favour effected by means of the consent decree would be hit by the rule of *lis pendens* and the plea under section 17-A of the Land Tenures Act would not be available to him so as to defeat the right of pre-emption of the appellant.

(7) In the result, this appeal is allowed, the impugned judgment and decree reversed, and the suit of the plaintiff decreed without any order as to costs provided he deposits the purchase money after deducting the amount already deposited by him in the trial Court on or before the 1st of August, 1981. If the amount is not deposited as directed, the suit shall stand dismissed with costs.

S. S. Sandhawalia, C.J.—I agree.

S.C.K.