

Karam Chand and another v. Kewal Krishan and others  
(J. V. Gupta, J.)

be approved after suitable modification. I am afraid, it is not permissible for this Court to adopt any such measure. As is apparent from the opening words of section 392 powers under the said section can be exercised only when a compromise or arrangement is sanctioned under section 391. If there is no valid arrangement before the Court because of the non-satisfaction of the requirements of section 391(2) of the Act it can never be sanctioned by the Court and the question of coming into play of section 392 does not arise. It will, therefore, be beyond the competence of this Court to order any modification in the proposed compromise or arrangement.

(9) For the reasons recorded above, this application must fail and is hereby dismissed with costs.

H. S. B.

Before J. V. Gupta, J.

KARAM CHAND AND ANOTHER,—*Petitioners.*

*versus*

KEWAL KRISHAN AND OTHERS,—*Respondents.*

Civil Revision No. 1019 of 1985

August 24, 1985

*Punjab (Security of Land Tenures) Act (X of 1953)—Section 8(b)—Code of Civil Procedure (V of 1908)—Order 22 Rule 5—Suit for pre-emption filed by the tenant—Said tenant died during the pendency of the suit without leaving any descendants as contemplated by Section 8(b)—Application filed by other persons under Order 22 Rule 5 claiming the tenancy right on the basis of a will—Such application—Whether maintainable.*

*Held*, that the suit could be continued by the legal representatives of the tenant if he leaves behind any male lineal descendant or mother or widow as contemplated under Section 8(b) of the Punjab Security of Land Tenures Act, 1953. If the tenant does not leave behind any such descendant the continuity of tenancy comes to an end on the death of the tenant. In this view of the matter the application under Order 22, Rule 5 of the Code of Civil Procedure, 1908, filed by the applicants is not maintainable.

... (Para 4).

*Petition under section 115 C.P.C. for revision of the Order of Shri S. P. Singh, H.C.S., Sub-Judge, 1st Class, Gohana, dated 22nd December, 1984, dismissing the application by holding that the applicants cannot be impleaded in the present suit as L.R.s of Smt. Ram Piari, deceased, for prosecution of this case further on her behalf.*

M. L. Sarin, Advocate and Sukhdev Singh, Advocate, for the Petitioner.

Bhoop Singh, Advocate, for the Respondents.

### JUDGMENT

J. V. Gupta, J.:

This revision is directed against the order of the trial Court, dated 22nd December, 1984, whereby the application filed on behalf of the petitioners for bringing them on record as legal representatives of Shrimati Ram Piari plaintiff (deceased) was dismissed. Two persons, Bholu Ram and Shrimati Ram Piari (now deceased) filed a suit for pre-emption claiming their superior right on the ground that they were tenants over the suit land at the time of sale by the vendors. During the pendency of the suit one of the plaintiffs Shrimati Ram Piari died. The petitioners, Karam Chand and Ram Kishan, sons of Jumma Ram, filed an application for bringing them on record as the legal Representatives of the deceased-plaintiff Shrimati Ram Piari. Admittedly they claimed their right under a will, dated 2nd March, 1982, executed by Shrimati Ram Piari in their favour. This application was contested on behalf of the vendee-defendants. It was pleaded by them that under the Punjab Pre-emption Act the right of pre-emption is not heritable and as such the legal representatives of Shrimati Ram Piari cannot be impleaded in this suit to enable them to continue the suit further. As per their stand the suit of Shrimati Ram Piari stands dismissed. The main contention raised on behalf of the petitioners before the trial Court was that in view of Order 22, Rule 5 of the Code of Civil Procedure, the Court is not to go into the question as to whether the right of pre-emption is heritable or not. The Court is bound to implead the petitioners as legal representatives of the deceased plaintiff Shrimati Ram Piari and the other questions can be determined only at the time of final disposal of the suit. Learned trial Court came to the conclusion that the tenancy of Shrimati Ram Piari, deceased cannot be continued through the petitioners as they

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did not fall within the category mentioned under Section 8 of the Punjab Security of Land Tenures Act and thus concluded that they did not become the legal representatives of Shrimati Ram Piari, deceased-plaintiff, consequently their application was dismissed. Dissatisfied with the same they have filed this petition in this Court.

(2) Learned counsel for the petitioners vehemently contended that at this stage the question as to whether the tenancy rights can be willed away or not or whether the right of pre-emption on the basis of tenancy has come to an end or not is not to be gone into. The petitioners, according to the learned counsel, are entitled to be impleaded as legal representatives under Order 22, Rule 5 of the Code of Civil Procedure. In support of this contention reference was made to *Hari Chand and another v. Banwari Lal and another* (1). It was next contended that Shrimati Ram Piari being a statutory tenant was competent to make the will of her rights in the suit land and, therefore, the legatees were entitled to be impleaded as her legal representatives.

(3) On the other hand learned counsel for the respondents submitted that Shrimati Ram Piari was a tenant at will and, therefore, she was not competent to will away her right in the land. In support of his contention he referred to *Sawan Singh vs. Kartar Singh and others*, (2), *Anwari Ali Bepari and others vs. Jamini Lal Roy Chaudhry and others* (3), and *Raman Lal vs. Bhagwan Dass* (4).

(4) After hearing learned counsel for the parties I do not find any merit in this petition, as admittedly it is a suit for pre-emption, in which the right was claimed on the basis that Shrimati Ram Piari (now deceased) was the tenant on the suit land under the vendors. The suit can be continued by the legal representatives of the tenant if he leaves behind any male lineal descendant or mother or widow as contemplated under Section 8 of the Punjab Security of Land Tenures Act. If the tenant does not leave behind any such male lineal descendant or mother or widow the continuity of

(1) 1981 (2) R.L.R. 535.

(2) A.I.R. 1933 Lahore 400.

(3) A.I.R. 1940 Calcutta 89.

(4) A.I.R. 1950 All 583.

tenancy comes to an end on the death of the tenant. Section 8 of the Punjab Security of Land Tenures Act is reproduced hereunder for ready reference:—

“CONTINUITY OF TENANCIES:—The continuity of a tenancy shall not be affected by—

- (a) the death of the landlord, or
- (b) the death of the tenant, except when the tenant leaves no male lineal descendants or mother or widow, and
- (c) any change therein under the same landowner and for the purposes of section 17 and 18 of this Act, such tenancy shall be the last area so held.”

(5) What to talk of tenancy at will, even the inheritance of occupancy rights is governed by Section 59 of the Punjab Tenancy Act. There is no warrant for the proposition that the tenancy rights can be willed away by the tenant. It was held in *Sawan Singh's case* (supra) while dealing with the Punjab Tenancy Act that there is no power in the occupancy tenant to dispose of the occupancy tenancy by a will taking effect after his death. The matter was also considered by this Court in *Mahan Singh and another vs. Haryana State and others* (5), while interpreting Section 10-A of Punjab Security of Land Tenures Act. It was observed therein that:—

“That the short question to be considered is whether the petitioners are entitled to the benefit of the provisions of Section 10-A(b) of the Act or not. The said benefit can only be made available if the land is acquired by the State Government under any law for the time being in force or by any heir by inheritance. Disposition of property by will in no sense can be termed as inheritance. Thus Mahan Singh and Pritpal Singh who became owners of the property in view of the will made by Smt. Parbati cannot be termed as heirs by inheritance.”

Thus viewed from any angle, Section 8 squarely provides that the continuity of the tenancy shall not remain intact after the

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death of the tenant when the tenant leaves no male lineal descendant or mother or widow.

(6) The contention that this question be left open and need not be decided at this stage has also no merits. The judgment relied upon in this behalf i.e., *Hari Chand and another's case* (supra), has absolutely no applicability to the facts of this case. It is a suit for pre-emption and the moment the pre-emptor dies, it being personal right, it dies with him. In this view of the matter this petition fails and is dismissed with costs.

H. S. B.

*Before M. M. Punchhi, J.*

P. K. BANERJEE AND ANOTHER,—*Petitioners.*

*versus*

STATE OF PUNJAB,—*Respondent.*

*Criminal Misc. No. 1-M of 1985*

August 29, 1985.

*Code of Criminal Procedure (II of 1974)—Section 468—Essential Commodities Act (X of 1955)—Sections 7 and 12 AA—Fertilizer Control Order, 1957—Clause 13—Section 7 making offences under the Act punishable with imprisonment extending upto 7 years—Section 12 AA making the offences triable summarily and enabling Special Courts to pass a sentence not exceeding 2 years—Limitation for the trial of such offences—Bar of limitation under Section 468 of the Code prohibiting trial after three years—Whether applicable.*

*Held,* that Section 468 of the Code of Criminal Procedure, (1974, prescribes period of limitation and specifically says that if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years, limitation for its trial is three years. Now the word 'punishable' as used in Section 468 is meaningful. It cannot be read as 'punished'. Offences under Section 7 of the Essential Commodities Act, 1955, are punishable with imprisonment which may extend to seven years. Limitation has no place merely because the Court is to impose a lesser punishment or, even if, the Magistrate trying as a warrant case such an offence, is only empowered to inflict punishment upto three years. Powers of particular courts to impose sentence lesser than the one for which the