

Court related only to the two ventilators and this appeal was also under-stamped according to the view of the lower appellate Court. Thus, there was no proper appeal before the Court and the only course open to the Court was to call upon the appellant to pay the correct Court-fee on the memorandum of appeal and if that was not paid, to dismiss the appeal and it could not take any further action. Following the view of the Madras High Court, therefore, I feel that the order passed by the lower appellate Court is not warranted and I accept this appeal, set aside the judgment and decree of the lower appellate Court and restore that of the trial Court. In the peculiar circumstances of the case, there will be no order as to costs.

Basant Lal
v.
Baru and
another
Harbans Singh
J.

B. R. T.

REVISIONAL CIVIL

Before D. Falshaw, Chief Justice and Mehar Singh, J.

JOGINDER KAUR, AND ANOTHER,—*Petitioners.*

versus

JASBIR SINGH AND OTHERS,—*Respondents.*

Civil Revision No. 260 of 1964.

Punjab Pre-emption Act (I of 1913)—S. 15(2) (b) (Secondly)—Husband's brother of the vendor filing suit for pre-emption and dying during the pendency of the suit—His sons—Whether can continue the suit as his legal representatives.

1965
August, 25th

Held, that the heir of a deceased plaintiff in a pre-emption suit can continue the suit if, at the date of the sale he had an independent right to pre-empt. The sons of the deceased plaintiff—pre-emptor in the present case had such a right under section 15(2) (b)—Secondly of the Punjab Pre-emption Act, 1913, and they were therefore, rightly impleaded as his legal representatives in the suit and are competent to continue the same.

Case referred by the Hon'ble Mr. Justice Shamsheer Bahadur on 21st August, 1964 to a larger Bench owing to an important question of law involved in the case. The Division Bench consisting of the Hon'ble the Chief Justice Mr. D. Falshaw and the Hon'ble Mr. Justice Mehar Singh decided the case on 25th August, 1965.

Petition under Section 115 C.P.C. for revision of the order of Shri N. S. Swaraj, Sub-Judge, 1st Class, Muktsar, dated the 6th April, 1964, bringing on record the heirs of the deceased pre-emptor and permitting them to continue the suit.

F. C. MITTAL, AND B. S. Gupta, ADVOCATES, for the Petitioners.

H. L. SARIN, AND MISS ASHA KOHLI, ADVOCATES, for the Respondents.

ORDER OF THE HIGH COURT

Mehar Singh, J. MEHAR SINGH, J.—This revision application, referred to a larger Bench by the order, dated August 21, 1964, of Shamsheer Bahadur, J., arises out of a suit for pre-emption of agricultural land. The pre-emptor, having claimed right to pre-empt the sale of the land under section 15(2) (b), Secondly, of the Punjab Pre-emption Act, 1913 (Punjab Act 1 of 1913), on the ground of being husband's brother of the vendor, Ajmer Kaur, has died during the pendency of the suit. His sons have been brought on the record of the suit as his legal representatives, and it is against the order impleading the sons as the legal representatives in the suit in place of their deceased father, the pre-emptor, that this revision application has been made. Under the same provision, husband's brother's son has also the same right of pre-emption as the husband's brother, in other words, the sons of the pre-emptor have an independent right to pre-empt the same sale. It is not denied that they did not institute such a suit and that if they are to do it now, after the death of their father, it would be barred by time.

The argument on the side of vendees is that personal right of pre-emption based on mere relationship dies with the pre-emptor, when such relationship ceases, and such a right cannot be continued by the legal representatives of the deceased pre-emptor as in this case. Reliance in this respect, is placed on *Partap Singh v. Daulat* (1), in which the plaintiff had claimed in a suit for pre-emption a preferential right over the vendee on the ground of near relationship to the vendor, but the plaintiff's sons had not, and on the death of the plaintiff it was held that the plaintiff's sons could not claim to take advantage of the relationship in which their father had stood to the vendor. The case is, however, distinguishable from the present case, because the sons in that case had no independent right to pre-empt the sale. In the present case the sons of the pre-emptor have had such a right from the very date the sale was effected. So this case does not help to advance the argument on the side of the vendees. In the Lahore High Court it has been settled that a right to sue

(1) I.L.R. (1914) 36 All. 63.

for pre-emption upon a cause of action which accrued to a person in his life-time passes at his death to his successor who inherits the property through which the right had accrued: *Faqir Ali Shah v. Ram Kishan* (2) and other cases in Punjab referred to at page 145 of the Law of Pre-emption in the Punjab by Ellis, 1961 Edition. The position of the law is the same in Allahabad as has been held by a Full Bench of that Court in *Wajid Ali v. Shaban* (3). Lately in *Lal Singh v. Mohan Singh*, Second Appeal from Order No. 19, of 1963, decided on July 31, 1963, Harbans Singh, J., has followed the previous decisions of the Punjab Chief Court in a case exactly parallel to the present case pointing out that the test laid down in the decided cases is that the heir of a deceased plaintiff in a pre-emption suit can continue the suit if, at the date of the sale, he had an independent right to pre-empt. The sons of the deceased pre-emptor in the present case had such a right as had already been pointed out. The order of the trial Court in impleading them as legal representatives of the deceased plaintiff in this pre-emption suit is, in the circumstances, not open to any argument what soever.

The revision application fails and is dismissed, but, in the circumstances of the case, the parties are left to their own costs.

D. FALSHAW, C. J.—I agree.
B.R.T.

Joginder Kaur
and another
v.
Jasbir Singh
and others
Mehar Singh, J.

Falshaw,
C. J.

REVISIONAL CIVIL

Before Inder Dev Dua, J.

REV. G. HARISH CHAPLAIN,—Petitioner.

versus

PREM NATH AND OTHERS,—Respondents.

Civil Revision No. 459 of 1965.

Code of Civil Procedure (V of 1908)—Order 6 rule 17—
Amendment of pleadings—When to be allowed—Discretion—How
to be exercised—Amendment of plaint to admit certain docu-
ments in evidence—Whether to be allowed.

1965

Held, that sub-rule (1) of rule 17 of Order 6 of the Code of Civil Procedure has two portions; the first portion leaves the matter to the discretion of the Court whereas the second portion apparently makes it imperative for the Court to make all such amendments as may be necessary for determining the real matter in controversy between the parties. This duty appears to be a rule of conduct as distinguished from a rigid rule of

August, 26th

(2) 133 P.R. 1907 (F.B.).

(3) I.L.R. (1909) 31 All. 623.