

Shankar Singh v. Chanan Singh (Mehar Singh, C.J.)

In my opinion, there is no force in this petition which fails and is dismissed. As the matter involved, however, is *res integra* and has been decided on first principles, I would make no order as to costs.

K. S. K.

REVISIONAL CIVIL

Before Mehar Singh, C.J.

SHANKAR SINGH,—Petitioner

versus

CHANAN SINGH,—Respondent

Civil Revision No. 34 of 1967

December 15, 1967

*Punjab Pre-emption Act (I of 1913)—S. 15—Code of Civil Procedure (Act V of 1908)—S. 115 and Order 6 Rule 17—Suit for pre-emption of agricultural land—Plaint asserting collateral relationship with vendor—Amendment of the plaint introducing defined relationship sought after period of limitation for the suit—Whether to be allowed—Discretion exercised by trial Court in allowing the amendment—Whether can be interfered with in revision.*

*Held*, that the basis for filing a suit for pre-emption is that specific ground on which preferential right of pre-emption is sought must be pleaded in the suit within the period of limitation. The plaintiff's assertion that vendor is his collateral is not enough because under section 15 of the Punjab Pre-emption Act, 1913, collateral relationship by itself does not give a right of pre-emption in respect of sale of agricultural lands. A particular defined relationship does give a right of pre-emption and if on the ground of relationship such a right is claimed, then obviously the particular relationship referred to as a ground in section 15 of the Act has to be stated in the plaint within the period of limitation. If after the period of limitation such an attempt is made by amending the plaint, it cannot be permitted to defeat a right that has accrued to the vendee to defeat the pre-emptor's claim as not coming within the statutory provision upon which reliance is placed.

*Held*, that the discretion vested in a Court of law is always a judicial discretion and where it exercises discretion by allowing amendment of the plaint against the statute of limitation, it cannot be said to have exercised the discretion judicially. It has, therefore, outstepped its jurisdiction in this respect and hence the matter can be considered under section 115 of the Code of Civil Procedure.

*Petition under section 115, Code of Civil Procedure, for revision of the order of the Court of Shri V. S. Aggarwal, Sub-Judge II Class, Jullundur, dated 29th August, 1966, ordering that the amendment should not be refused and the same is allowed subject to the payment of Rs. 10 as costs.*

G. S. SACHDEV, ADVOCATE, for the Petitioner.

P. C. JAIN, ADVOCATE, for the Respondent

#### JUDGMENT

MEHAR SINGH, C.J.—On May 25, 1965, 20 Kanals and 18 Marlas of land was sold by Arjan Singh, Sohan Singh and Pritam Singh, vendors, to Shankar Singh, defendant. On May 25, 1966, that is to say, on the last day of limitation, Chanan Singh plaintiff instituted a suit to pre-empt that sale. In paragraph 1 of the plaint he said that the vendors are his collaterals, and in paragraph 2 of the plaint he said that he has a preferential right of pre-emption in so far as the sale of the land in question is concerned over the defendant, which means the vendee, who, he has further said, is not related to the vendors in any way. In the plaint Chanan Singh plaintiff, explained nothing else in regard to the nature of his relationship with the vendors. In the written statement filed by Shankar Singh vendee, on August 8, 1966, he pointed out that the plaintiff had not said in what capacity he was claiming preferential right of pre-emption in his suit.

Consequently on August 27, 1966, the plaintiff moved an application under Order 6, rule 17 of the Code of Civil Procedure for amendment of the plaint to say in it that of the vendors Arjan Singh in his first cousin, being his uncle's son, and Sohan Singh and Pritam Singh are his nephews, just the same as they are nephews of Arjan Singh, vendor. In spite of opposition by Shankar Singh vendee, that application was accepted by the trial Judge by his order of August 29, 1966. This is a revision application against that order by Shankar Singh vendee.

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There is only one argument which is urged by the learned counsel on behalf of the vendee and that is that according to section 15 of the Punjab Pre-emption Act, 1913 (Punjab Act 1 of 1913), collateral relationship is no ground of pre-emption in so far as the right of pre-emption in respect of agricultural land is concerned. This obviously has not been and cannot be denied on the opposite side, but it is pointed out on the side of the plaintiff that grounds. Secondly and Thirdly in clause (a) of sub-section (1) of section 15 of Punjab Act 1 of 1913 give a right of pre-emption in respect of agricultural land to the brother or brother's son of the vendor, and to the father's brother or father's brother's son of the vendor, and the learned counsel for the plaintiff says that that relationship is the one which the plaintiff has with Arjan Singh vendor and with Sohan Singh and Pritam Singh, vendors. The learned counsel stresses that the plaintiff has done no more than to explain the nature of his collateral relationship in his amendment application and that the ground on which he claimed preferential right of pre-emption on the basis of collateral relationship has been stated in the plaint itself. The learned counsel has further pointed out that if instead of making an application for amendment of the plaint in this respect the plaintiff had filed a replication, after the written statement of the vendee, giving therein the same relationship it would have been read as a part of his pleadings and no question of amendment would have arisen. However, this is what has not actually happened and at this stage the learned counsel has not urged that the application for amendment of the plaint by the plaintiff be treated as a replication filed by him to the written statement of the vendee. The learned counsel for the vendee first refers to *Rulia Ram v. Ram Chandar Das* (1), in which right of pre-emption had been claimed on the basis of contiguity, but on discovery that that ground was not available and a new ground that there was common entrance in a lane was claimed after the period of limitation. Such amendment the learned Judge refused. This case was followed in *Chandgi Ram v. Rabi Datt* (2) in which originally the preferential right of pre-emption was claimed on the basis of the claimants being Biswedars in the village, but when it was found that before the institution of the suit the vendee had also become a Bisweddar in the village, the claimants, after the expiry of the period of limitation, sought amendment of the plaint to say that

(1) A.I.R. 1933 Lah. 774(1).

(2) A.I.R. 1952 Punj. 231.

they were Biswedars in a particular sub-division of the village in which the land was situate, obviously implying that the vendee was not a Bisweddar in that sub-division. Such amendment was disallowed by the learned Judge. Now, although in those two cases the new ground introduced had no possible relation with the ground originally pleaded in the plaint, but the basis on which those cases proceed equally applies to the present case. The basis is that the specific ground on which preferential right of pre-emption is sought must be pleaded in the suit within the period of limitation. In this case all that Chanan Singh plaintiff did was to say that the vendors are his collaterals, but in section 15 of Punjab Act I of 1913 such relationship by itself does not give a right of pre-emption. A particular defined relationship does give a right of pre-emption and if on the ground of relationship such a right is claimed, then obviously the particular relationship referred to as a ground in section 15 of Punjab Act I of 1913 has to be stated in the plaint within the period of limitation. If after the period of limitation such an attempt is made, it cannot be permitted to defeat a right that has accrued to the vendee to defeat the pre-emptor's claim as not coming within the statutory provision upon which reliance is placed. Obviously the learned Judge was wrong in allowing the amendment.

The learned counsel for the plaintiff then points out that so far as rule 17 of Order 6 is concerned, it is a matter of discretion with the trial Court to allow or not to allow an amendment and if it has exercised discretion in this respect, this Court cannot interfere with that under section 115 of the Code of Civil Procedure. However, the discretion vested in a Court of law is always a judicial discretion and where it exercises discretion, as in this case, against the statute of limitation, it cannot be said to have exercised the discretion judicially. It has, therefore, outstepped its jurisdiction in this respect and hence the matter can be considered under section 115 of the Code of Civil Procedure.

In consequence, this revision application is accepted, the order, dated August 29, 1966, of the trial Court is set aside and the amendment claimed by the plaintiff in this case is disallowed. There is, however, no order in regard to costs in this application.