

Raj Singh v. Amar Singh, etc. (Tewatia, J.)

the decision has been taken or the order has been passed by the Registrar or his delegate, then the revision will lie to the State Government. If, on the other hand, the order has been made by any of the authorities subordinate to the Registrar, then in that case the Registrar will have the revisional powers. This is the plain meaning of section 69 of the Act.

With these observations, I agree with the order proposed by my learned brother.

K. S. K.

APPELLATE CIVIL

Before Man Mohan Singh Gujral and D. S. Tewatia, JJ.

RAJ SINGH,—Objector-J. Debtor.

versus

AMAR SINGH, ETC.,—Respondents.

Execution Second Appeal No. 2009 of 1970.

May 14, 1975.

*Code of Civil Procedure (Act V of 1908)—Section 47—Pre-emption decree-holder selling the pre-empted property to a stranger—Whether debars himself from obtaining possession of the property in execution of the decree.*

*Held*, that the holder of a decree enforcing a right of pre-emption, who subsequently to the date of the decree sells the property to a stranger does not by such conduct debar himself from obtaining possession of the property in execution of the decree. The Court to which application for execution of the decree is made is bound by its terms, as are the parties to it. It has no power to go behind the decree or to enter into the questions beyond its scope. The decree-holder despite having divested himself of the ownership rights in the subject matter of the decree, his right to execute the decree remains intact.

*Execution Second Appeal from the orders of the Court of Shri P. L. Sanghi, Senior Sub-Judge with Enhanced Appellate Powers, Rohtak, dated 14th December, 1970, affirming that of Shri Ram Saran Bhatia, Sub-Judge, 1st Class, Jhajjar, Tehsil Jhajjar, dated 3rd June, 1970, dismissing the petition of Objections filed by Raj Singh.*

S. C. Kapur, Advocate, for the appellant.

N. C. Jain, Advocate, for the respondents.

## JUDGMENT

TEWATIA, J.—The common question of law that falls for determination in the two execution appeals No. 2009 of 1970 and No. 2010 of 1970, pertains to the right of a pre-emptor decree-holder to execute the pre-emption decree after the securing of which he effected the sale of the land forming subject matter of that decree to a third party.

(2) The relevant facts having a bearing on the proposition above-said can be stated thus:

(3) The two pre-emption suits instituted by Amar Singh respondent were decreed in his favour on 3rd June, 1970. He was ordered to deposit the balance of the pre-emption money by 18th August, 1970. He deposited the said amount on 5th August, 1970. On 13th August, 1970, he effected the sale of the land in question to a third party which may now be called 'second vendee'. On 19th August, 1970, the judgment-debtor, that is, the first vendee drew the amount and a day earlier, i.e., on 18th of August, 1970, Amar Singh, respondent took out execution proceedings. The appellant judgment-debtor challenged the right of respondent decree-holder to execute the decree and receive the possession of the land after the latter had divested himself of the ownership rights therein.

(4) The executing Court as also the first appellate Court dismissed the objections of the judgment-debtor and thus the matter reached this Court through these two appeals.

(5) The two execution second appeals in question in the first instance came up for decision before my learned brother Gujral, J. He referred the case to be placed before a larger Bench in view of the observations which will be alluded to a little later, of Pandit J., in *Hazari and others v. Zila Singh and others* (1) and that is how the matter has been placed before us for decision.

(6) The learned counsel for the appellant canvassed the acceptance of the view expressed by Pandit J. in *Hazari and others v. Zila Singh and others* (supra) as discernible from his following observations:

"In the instant case leaving aside the second vendees, I am doubtful if the pre-emptor himself could execute the

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(1) A.I.R. 1970 Pb. & Hr. 215 (F.B.).

Raj Singh v. Amar Singh, etc. (Tewatia, J.)

decrees. After having categorically stated in the sale-deed of 6th December, 1962 that he had handed over the possession of the land to the second vendees after having received the purchase money from them, how does it then lie in his mouth to say, after a number of years that he wanted to get possession of the land after executing the pre-emption decrees ? If I am right in saying so, then the question of the execution of the decrees by the second vendees will obviously not arise. If the pre-emptor himself cannot execute the decrees, no person claiming under him can have better rights than him and execute them."

The question that came up for determination before the Full Bench in *Hazari and others' case* (supra) was as to whether the vendee from the pre-emptor decreeholder could execute the pre-emption decree and secure possession of the land, sold to him by the decreeholder, from the judgment-debtor. It was held therein that such a vendee had no right to execute the decree and obtain possession of the land from the judgment-debtor. While so holding Pandit J. made the following observations which are rather instructive and more to the point:—

"This apart, even under the law, a pre-emption decree being a personal one is not capable of being transferred. It was held by Mahmood J., in a Bench decision in *Ram Sahai v. Gaya* (2).

And if a decree for pre-emption were capable of transfer, so as to enable the transferee to obtain possession of the pre-emptible property in execution of that decree, it is clear that the object of the right of pre-emption would be defeated, for the transferee of the decree may be as much a stranger as the vendee against whom the decree was obtained, or that the latter may be a pre-emptor of a lower grade than the pre-emptor who originally obtained the decree.

This decision was followed by a Bench of the Lahore High Court, consisting of Broadway and Harrison JJ., in *Mehr Khan and Shah Din v. Ghulam Rasul and others* (3). So even if the pre-emptor wanted to transfer the decree by assignment, it could not be done under the law and such a transfer would be invalid.

(2) (1885) I.L.R. 7 All. 107.

(3) I.L.R. 2 Lah. 282=A.I.R. 1922 Lah. 300.

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A pre-emption decree is, under the law, either transferable or not. I am of the view that it cannot be transferred.”

The binding ratio of the above decision as made clear by the observations reproduced above is that a pre-emption decree is not assignable or transferable and consequently only the decree-holder named therein or his legal representatives could execute the same and obtain possession of the land. In case he or his legal heirs default in handing over the possession of the land to his vendee after securing it from the judgment-debtor, then the right of such a vendee is to file a suit for possession of the said land against his vendor decree-holder. From the above it follows deductively that despite the decree-holder having divested himself of the ownership rights in the subject matter of the decree, his right to execute the decree remains intact.

(7) It has been so held in *Ram Sahai v. Gaya and others* (2), which case was approvingly quoted by Campbell J., in *Faqir Muhammad Khan and others v. Pirdad Khan* (4), who held that the holder of a decree enforcing a right of pre-emption, who subsequently to the date of the decree sells the property to a stranger ‘does not by such conduct debar’ himself from obtaining possession of the property in execution of the decree and that the Court to which application for execution of a decree is made is bound by its terms, as are the parties to it, and has no power to go behind it or to enter into the questions beyond its scope.

(8) The learned counsel for the appellant, however, sought to argue that the recital in the sale deed to the effect that the decree-holder had delivered the possession of the property to the second vendee knocks the bottom out of any right that the decree-holder may profess to claim of executing the decree in that he cannot take possession of the land twice over from the judgment-debtor. This argument has to be merely noticed to be rejected. It was never the case of the judgment-debtors that the decree-holder had taken possession of the property from them outside the Court. The argument now raised before us was raised for the first time before the first appellate Court, perhaps to take advantage of the observations of Pandit, J., already quoted. The recital in the sale deed appears to be routine recital which the scribes by force of habit and practice

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(4) A.I.R. 1924 Lah. 615.

Firm Hanuman Dal & General Mills, Balsmand Road, Hissar  
*v.* The Market Committee, Hissar, etc. (Dhillon, J.)

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always insert in the sale deeds. The sequence of events also leaves no doubt in our minds that the above-said recital in the sale deed was merely a formal recital therein and did not represent the true state of affairs. Reference in this behalf can be made to the fact that the decree-holder had taken out execution proceedings on 18th August, 1970 even before the judgment-debtor had drawn the pre-emption money which was done a day after the filing of the execution application, that is, on 19th August, 1970. The possession outside the Court could have been delivered by the judgment-debtor only between 13th August, 1970 (the date on which the pre-emptor decree-holder sold the land) and 18th August, 1970 on which date decree-holder took out execution proceedings. The question of judgment-debtor having parted with the possession of the land outside the Court even before drawing the amount of pre-emption money, in our view, was very very unlikely. In view of the above the question of decree-holder trying to secure possession of the land twice over from the judgment-debtor does not arise.

(9) So far as the observations of Pandit, J., quoted above, are concerned, these appear to be obiter dicta and in any case not applicable to the facts of the present case.

(10) For the reasons stated above, we find no merit in these appeals and dismiss the same with costs.

MAN MOHAN SINGH GUJRAL, J.—I agree.

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K. S. K.

CIVIL MISCELLANEOUS

*Before Prem Chand Pandit and Bhopinder Singh Dhillon, JJ.*

FIRM HANUMAN DAL & GENERAL MILLS, BALSMAND  
 ROAD, HISSAR,—*Petitioner.*

*versus*

THE MARKET COMMITTEE, HISSAR, ETC.—*Respondents.*

Civil Writ No. 1183 of 1972.

May 17, 1973.

*Punjab Agricultural Produce Markets Act (XXIII of 1961)—  
 Sections 5 and 6—Section 6(4)—Whether presupposes the publica-  
 tion of notification under section 5 or 6—Words “notwithstanding*