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Indeed, it was said in I.L.R. 16 All. 412 that the word "*hissadar*" occurring in the *wajib-ul-arz* has the same meaning as the word "proprietor" occurring in section 146 of Act No. XIX of 1873.

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From what I have said above it follows that the purchaser of an isolated plot of land in a village is a *hissadar* within the meaning of the *wajib-ul-arz* giving a right of pre-emption to *hissadaran gaon*. That being the situation of matters, I think that Regular Second Appeal No. 2649 was correctly decided by Falshaw, J.

In the result, I would dismiss with costs Letters Patent Appeal No. 32 of 1949.

WESTON, C. J.—I agree.

APPELLATE CIVIL

Before Eric Weston, C. J., and Harnam Singh, J.

1952

GIANI RAM SINGH,—*Plaintiff-Appellant.*
versus

October, 9th

DALIP SINGH and OTHERS,—*Respondents.*

Letters Patent Appeal No. 45 of 1949.

Court Fees Act (VII of 1870) Section 7(v)and (vi)—Suit for pre-emption—Court fee payable—Relevant date for purposes of valuation—Improvements made by vendee—Pre-emptor whether to pay court-fee on value thereof—Right of pre-emption—Nature of.

Held, that the right of pre-emption being one of substitution the pre-emptor is only entitled to the property as it existed on the date of the sale. The value of the property for the purposes of Court fee, however, is to be computed at the date of the suit and not at the date of the sale, and in accordance with section 7(v) read with section 7(vi) of the Court Fees Act, without reference to the value of improvements made by the vendee because Section 7(vi) of the Act cannot be read entirely apart from the particular pre-emption law under which a suit for pre-emption is brought.

Held further, that there is nothing to debar a vendee from removing any improvements made by him and restoring the property to its state at the date of the sale. In most cases a vendee who has made improvements would

require that on grounds of equity the pre-emptor should be made to pay for those improvements. The vendee is not so bound to require nor has the pre-emptor any legal right to claim anything more than the bargain which the vendee obtained. The pre-emptor cannot therefore be required to pay Court Fee upon improvements made by the vendee to which he has no claim in law and to which in fact he has made no claim.

Mohammad Anwar v. *Dial Chand* (1), distinguished.

Held also, that it is well established in Northern India at least that a right of pre-emption is a right of substitution.

Gobind Dayal v. *Inayatullah* (2), followed.

Letters Patent Appeal under Clause 10 of the Letters Patent against the order of Mr Justice Falshaw, dated the 12th April 1949, affirming that of Shri Sansar Chand, Senior Sub-Judge, Hoshiarpur, dated the 8th July 1948, who reversed that of Shri Des Raj, Sub-Judge, 2nd Class, Hoshiarpur, dated the 21st February 1948, remanding the case under order 41 rule 23, Civil Procedure Code, for a decision on merits.

S. D. BAHRI and H. R. SACHDEV, for Appellant.

D. K. MAHAJAN and DALJIT SINGH, for Respondents.

JUDGMENT

ERIC WESTON, C.J. These are two appeals under the Letters Patent from a judgment of Mr Justice Falshaw delivered on the 12th of April 1949 dismissing two connected appeals Nos. 38 and 39 of 1948. Eric Weston, C. J.

The facts are shortly these. By two sale deeds from different persons executed one on the 23rd of February 1946 and the other on the 3rd of April 1946 three persons, Hari Singh, Manohar Singh and Piara Singh purchased two adjacent plots of land, one measuring 10 Kanals 18 Marlas and the other 21 Kanals 7 Marlas in village Mahalpur in the Hoshiarpur District. The plots were agricultural land but after purchase substantial buildings were erected on the lands for the purposes, we understand, of a college. On the 18th of February 1947 two suits were instituted, one by one

(1) A.I.R. 1937 Lah. 239.
(2) I.L.R. 7 All. 775

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Giani Ram Singh who sought to pre-empt the sale of the 23rd of February 1946, the other by one Karam Singh who claimed two alternative reliefs, one that the sale of the 3rd April, 1946 was of ancestral land and the sale could not affect his rights as a reversioner, the second that he was entitled to pre-empt. The question which arises is whether on the reliefs for pre-emption sought in both suits the respective plaintiffs are bound to pay court-fee not on the value of the land the sale of which is sought to be pre-empted but on the value of the land plus the buildings as they stood at the date the two suits were instituted. The trial Court in both suits held that the plaintiff was bound to pay court-fee on the value of the improvements and appointed a local commissioner who assessed the value of those improvements. A report was made by this commissioner and the plaintiffs were then directed to make up the deficient court-fee in each case. As they failed to do so the plaints were rejected under Order 7, rule 11, Civil Procedure Code. Appeals were filed which came up before the Senior Subordinate Judge who agreed with the trial Court that court-fee must be paid not only on the value of the land but also on the value of the buildings. He remanded the case considering that there was not sufficient material on the record to determine the value of the buildings in existence at the date of the two suits. The Senior Subordinate Judge also held that the plaint in the second suit could not have been rejected as there was the alternative relief for declaration. From this order of remand appeals were filed in this Court and they were disposed of by a judgment now challenged before us. The learned Single Judge in view of a decision reported in *Mohammad Anwar* v. *Dial Chand* (1), has dismissed the appeals agreeing with the view taken by the Courts below that court-fee must be paid on the value of the improvements made as existing at the date of the two suits.

It is well established in Northern India at least that a right of pre-emption is a right of substitution. A Full Bench of the Allahabad High

(1) A.I.R. 1937 Lah. 239

Court in *Gobind Dayal* v. *Inayatullah* (1), laid down that the right entitles the pre-emptor, by reason of a legal incident to which the sale itself was subject to stand in the shoes of the vendee in respect of all the rights and obligations arising from the sale under which he has derived his title. Mr Justice Mahmood expressed the doctrine in these words—

> "It is, in effect, as if in a sale-deed the vendee's name were rubbed out and the pre-emptor's name inserted in its place."

The result of this is that the pre-emptor takes the bargain as it was made. If after the sale the purchaser has made improvements or constructions on the property, then undoubtedly, provided the improvements or constructions were not made with knowledge of the pre-emptor's claim or with the deliberate intention of defeating the claim by a pre-emptor, the purchaser in equity will be entitled to be compensated for those improvements or constructions. It was said in *Buta Singh* v. *Tara Singh* (2) :—

> "The right of the defendant to recover his outlay in improvements depends upon a rule of equity the application of which varies with the facts of each case on which it is brought to bear. Strictly speaking, the defendant is not entitled to be reimbursed for improvements which were not made in good faith."

There are numerous decisions by which compensation was allowed for improvements. It is perhaps enough to mention one only, *Fateh Muhammad* v. *Hakim Khan and another*, (3), where Mr Justice Jai Lal said that the vendee of land subject to the right of pre-emption is not necessarily deprived of his right to claim compensation for the improvements made by him on the land by the mere

(1) I.L.R. 7 All. 775
(2) 122 P.R. 1907
(3) A.I.R. 1926 Lah. 629.

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fact that he erected the buildings with full knowledge of such right. His right to claim compensation depends upon the circumstances proved in each case. If it be established that he constructed the buildings *bona fide*, he is entitled to compensation. If, however, the building is constructed in anticipation of a suit for pre-emption then he would probably not be entitled to compensation.

On the principle that the right of pre-emption is one of substitution it seems to me that the correct view is that all that the pre-emptor is entitled to as of right is the property in the state it existed at the time of the sale. If the vendee in the interval has made improvements and constructions I cannot understand that anything could debar him from removing those improvements and constructions and restoring the property to its state at the time of the sale. In most instances of course the vendee would prefer not to do so, but would seek to require that on grounds of equity the pre-emptor should be made to pay for those improvements. The point, however, is that he is not bound to do this. He is not bound that the materials he has used on constructions and improvements should go to the pre-emptor. The pre-emptor has no legal right to claim anything more than the bargain which the vendee obtained. If by his suit he claims in terms no more than the bargain which the vendee possessed, it is difficult to understand on what ground the pre-emptor can be required to pay court-fee upon improvements to which he has no claim in law and to which in fact he has made no claim.

The Court-fee to be paid on a suit for pre-emption is laid down by section 7(vi) of the Court Fees Act, which reads as follows :—

> "In suits to enforce a right of pre-emption —According to the value (computed in accordance with paragraph v of this section) of the land, house or garden in respect of which the right is claimed."

It may be accepted that the value for the purposes of court-fee must be computed with reference to the date of the suit and not with reference to the date of the sale sought to be pre-empted, but this in my opinion does not affect the point we are called upon to decide. No doubt it is necessary where valuation is challenged for investigation by the Court whether the valuation given by the plaintiff is the true valuation. A pre-emption suit, however, is not one in which the plaintiff is entitled to give a tentative value. He may give a wrong value which will be subject to correction by a Court. The court-fee payable in such a suit cannot be dependant upon the defence which may be raised and I am unable to understand how the existence of improvements can require a plaintiff to pay court-fee on something which he has not claimed and which the defendant is entitled to remove or alternatively to make an equitable claim for compensation thereof. In several cases it has been conceded that a right of pre-emption cannot be defeated by the vendee making extensive improvements in the property so as to render it impossible for a poor pre-emptor to meet an equitable claim for the value of these improvements. On the same reasoning a pre-emptor should not be defeated by being called upon to pay court-fee far in excess of that payable under section 7(vi) on the original bargain he seeks to secure. The decision in the case relied upon by the learned Single Judge, *Mohammad Anwar* v. *Dial Chand* (1), refers to an earlier Single Bench decision, but Skemp, J. seems to have been influenced by his view that the suit before him was one by way of black-mail, and he seems to have considered it obviously wrong that a plaintiff on payment of court-fee on an amount of Rs 203 or at any rate on Rs 400 should obtain a decision relating to property valued at more than Rs 2,000. With great respect, while no doubt many pre-emption suits filed towards the close of the period of limitation of one year allowed may be speculative, there can be no presumption that all such suits are so ; and the question of court-fee is not

(1) A.I.R. 1937 Lah. 239

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a matter which can depend on some ultimate decision as to the bona fides of a plaintiff. There must be a general rule as to court-fee payable in such suits and on the principle that in law a pre-emptor is entitled to no more (and no less) than the bargain he seeks to pre-empt, the court-fee payable should be on the value of that bargain as it exists at the date of the pre-emption suit. Section 7(vi) of the Court Fees Act, cannot be read entirely apart from the particular pre-emption law under which a suit for pre-emption is brought.

I think, therefore, that the view taken by the Courts below is not correct and that the court-fee, paid in accordance with section 7(vi) read with 7(v) of the Court Fees Act, was the proper court-fee to be paid in these two suits. The result would be that the appeal is allowed, the order of remand made by the Senior Subordinate Judge is set aside and the suit will go back to the trial Court for decision. The question of the value of improvements may well arise at a later stage in the suit if the equities between the parties fall to be considered, and there is no occasion for us to make an order interfering with any pending enquiry which may be going on to fix the value of these improvements. Costs in these appeals will be costs in the cause.

Parties to appear before the trial Court on the 10th of November, 1952.

HARNAM SINGH, J.—I agree.