

Bishan Narain
and another
v.
Om Parkash
and others

Kapur J.

and remand the case for trial in accordance with law. As the appeal has succeeded on a preliminary point, I order that the court-fee be refunded. The parties have been directed to appear in the trial Court on the 3rd January 1952. As the learned Subordinate Judge preferred to follow a Division Bench of the Lahore High Court, with which we are not agreeing, the parties will bear their own costs in this Court and in the Court below.

Falshaw J.

FALSHAW, J. I agree.

APPELLATE CIVIL

Before Bhandari and Soni, JJ.

PALA SINGH,—*Plaintiff-Appellant,*

versus

SUKHA SINGH AND ANOTHER,—*Defendants-Respondents.*

Letters Patent Appeal No. 67 of 1948

Punjab Tenancy Act (XVI of 1887), sections 5, 53 and 59—Punjab Pre-emption Act (1 of 1913), section 15 (a)—Whether landlord is an heir to his occupancy tenant—Whether he can pre-empt the sale of occupancy rights by his tenant.

Held, that a landlord cannot be regarded as an heir to a deceased occupancy tenant as he is not entitled to receive the occupancy rights in his capacity as the legal representative of the deceased. When an occupancy tenant dies without leaving any heir his occupancy rights merge in the rights of ownership of the landlord and for all practical purposes devolve on the landlord. This devolution takes place not because the landlord is an heir but because the rights themselves have ceased to exist. He cannot, therefore, pre-empt the sale of occupancy rights under section 15 of the Punjab Pre-emption Act as he is not a person entitled to inherit the occupancy rights. His interests are safeguarded by section 53 of the Punjab Tenancy Act even

1951

Nov. 23rd

before the sale is actually made. The right conferred upon him by the section is not an illusory but a substantial right.

Pala Singh
v.
Sukha Singh
and another

Letters Patent Appeal under clause 10 of the Letters Patent, from the decree of the Court of Mr Justice Falshaw of the High Court of Judicature at Simla, in R.S.A. 2677 of 1946, dated the 5th day of August 1948, affirming that of S. Bhagat Singh, Additional District Judge, Ferozepore, dated the 8th October 1946, which affirmed that of Shri Gian Chand Behal, Subordinate Judge 1st Class, Ferozepore, dated the 18th May 1945, dismissing the plaintiff's suit with costs.

SHAMAIR CHAND, for Appellant.

N. C. MEHRA, for Respondents.

JUDGMENT

BHANDARI, J. The short point for decision in the present case is whether a landlord is an heir under section 59 of the Punjab Tenancy Act and consequently whether he has a right to pre-empt the sale of occupancy rights under the provisions of section 15 of the Punjab Pre-emption Act.

Bhandari J.

The facts of the case are simple and not in dispute. Allah Ditta and Midu, who are occupancy tenants under section 5 of the Punjab Tenancy Act in a plot of land belonging to Pala Singh, offered to sell these rights to him under the provisions of section 53 of the said Act. He omitted to avail of the offer and the rights were accordingly sold to Sukha Singh, Arjan Singh and Atma Singh for a sum of Rs 3,092. About a year later Pala Singh brought a suit for possession by pre-emption on the ground that as he was owner of the land in question his right of pre-emption was superior to that of the vendees who were neither owners nor co-sharers in the Patti in which the land was situate. The trial Court came to the conclusion that the landlord is not an heir under section 59 of the Tenancy Act and consequently that he is not entitled to pre-empt a sale under section 15 of the Punjab Pre-emption Act. This decision was

Pala Singh upheld both by the learned District Judge and by a learned Single Judge of this Court. The landlord is dissatisfied with the order and has come to this Court in appeal under clause 10 of the Letters Patent.

v.
Sukha Singh
and another

Bhandari J.

Although the framers of the Punjab Tenancy Act were anxious to confer valuable rights on tenants who had cultivated lands in their occupation for long periods, they were equally anxious to safeguard the interests of landlords and to preserve them from harm at the hands of strangers. It was in view of these considerations that sections 53 to 59 were enacted. Section 53 imposes a statutory obligation on an occupancy tenant who wishes to part with his rights of occupancy to cause a notice of his intention to be served on his landlord and to invite him to purchase the rights at such price as may be fixed by the Revenue Officer. If an offer is made to the landlord and he accepts the offer the sale is complete and the occupancy rights are extinguished. If no offer is made to him and the occupancy rights are sold to a stranger without his consent, the landlord is at liberty to sue for a declaration under section 60 of the Tenancy Act that the alienation is void and of no effect. If an offer is made to the landlord and he rejects the offer it is obvious that he is precluded by his conduct from having the sale declared null and void.

Mr Shamair Chand who appears for the landlord in the present case admits the correctness of the propositions enunciated above, but he contends that as a landlord he is an heir under section 59 of the Punjab Tenancy Act, and as he is one of the persons who, but for the sale, would be entitled, on the death of the vendor, to inherit the property sold, he has a right of pre-emption under section 15 of the Punjab Pre-emption Act. He contends that just as a plot of land belonging to a person who dies without leaving any heirs escheats to the State, similarly a right of occupancy belonging to a tenant who dies without leaving any heir devolves on the landlord. According to him the State in the first case and the landlord in the

second must be deemed to be heirs of the deceased land-holder and must be deemed to inherit the land or the occupancy rights in their capacity as such. No authority has been cited in support of this proposition.

Pala Singh
v.
Sukha Singh
and another
Bhandari J.

The contention appears to me to be wholly devoid of force. The expression "inherit" which appears in section 15 of the Pre-emption Act has not been defined and it is necessary, therefore, to refer to an English Dictionary for ascertaining the meaning that may properly be assigned to it. According to the Shorter Oxford Dictionary the expression means "to put one in possession as heir; to take or receive (property, especially realty or a right, title, etc.) as heir of the former possessor (usually an ancestor) at his decease; to get by legal descent or succession." The expression "heir" means one who on the death of another becomes entitled by law to succeed him in the enjoyment of property or rank; one who so succeeds, popularly one who receives or is entitled to receive property of any kind as the legal representative of a former owner." Judged in the light of the meanings assigned to these expressions it seems to me that a landlord can be regarded as an heir if he is entitled to receive the occupancy rights in his capacity as the legal representative of the deceased occupancy tenant. It has not been alleged, far less proved, that a landlord is a legal representative of his occupancy tenant.

Secondly, a perusal of section 59 makes it quite clear that a landlord cannot be an heir to his tenant. This section regulates "succession to right of occupancy". Subsection (1) specifies the persons on whom the right of occupancy is to devolve but it does not say that the landlord is one of them. Subsection (4) provides that if the deceased tenant has left no such persons as are mentioned in subsection (1) on whom his right of occupancy may devolve under that subsection, the right shall be extinguished. If section 59 is designed to regulate "succession to right of occupancy" and if the right of occupancy ceases to

Pala Singh
v. Sukha Singh
and another
Bhandari J.

exist as soon as tenant dies heirless, it is obvious that there can be no question of succession to a non-existent right. It follows as a corollary that the landlord cannot be regarded as an heir. It is true that for all practical purposes the right of occupancy devolves on the landlord and merges in the rights of ownership, but this fact alone is not, in my opinion, sufficient to establish that the landlord becomes an heir or inherits the right of occupancy. If the legislature had intended to confer a right of pre-emption on a landlord it would have made its intention plain by including him in the list of heirs set out in subsection (1) of section 59.

Thirdly, it seems to me that as the legislature has already made adequate provision for safeguarding the interests of the landlord it was not necessary to confer another right of pre-emption on him by including him in the list of heirs mentioned in subsection (1) of section 59. Section 53 clearly confers a right of pre-emption (or a right analogous to a right of pre-emption) on the landlord even before the sale is actually made by the tenant. It is not an illusory but a substantial right. Section 60 empowers the landlord to avoid the sale and later to force the tenant to sell the occupancy rights at a low price. If the landlord is not prepared to exercise either of these two rights the law is naturally entitled to presume that he is not interested in the purchase of occupancy rights. It was thus unnecessary for the legislature to confer yet another right of pre-emption on him under the provisions of section 15 of the Punjab Pre-emption Act.

Lastly, it must be remembered that as the right of pre-emption encroaches upon the right of a person to dispose of his property to the best possible advantage it must be regarded as a piratical right and the provision which confers this right should be strictly construed. In other words, a person who claims a right of pre-emption must prove beyond the shadow of a doubt that this right has been conferred upon

him by law and if he is unable to bring his case within both the letter and the spirit of the law, his claim to pre-emption must be rejected.

Pala Singh
v.
Sukha Singh
and another

Bhandari J.

No authority has been cited before us which states in express terms that a landlord is not an heir under section 59 of the Tenancy Act and is not entitled to pre-empt a sale under section 15 of the Pre-emption Act, but there are at least two authorities which appear to support the correctness of this proposition with reasonable certainty. In *Sardar Ali Shah and others v. Jiwan Singh* (1), a tenant gave notice to his landlords under section 53 of his intention to sell his right of occupancy, but as none of them accepted the offer the tenant sold his right to a third person. Thereupon one of the landlords who was also an occupancy tenant in the estate within the limits of which the property was situate brought a suit for possession by pre-emption on the ground that he was an occupancy tenant in the village and that his right of pre-emption was superior to that of the vendee. One of the contentions put forward before the Chief Court was that the landlord having failed to exercise his right as a landlord under section 53 was debarred from claiming in any other capacity. The Chief Court repelled this contention and held that the landlord's failure to proceed under section 53 of the Tenancy Act did not debar him from claiming pre-emption in his capacity as an occupancy tenant. Discussing this aspect of the question Reid, J., observed as follows :—

“ Now section 53 affects only landlords, while under section 13 an occupancy tenant may claim, and I see no reason against an individual who combines both qualifications, electing to claim under either.”

This decision makes it quite clear that according to the learned Judge the landlord in that case could

(1) 22 P. R. 1901

Pala Singh v. **Sukha Singh** and **another**
Bhandari J. pre-empt the sale in two capacities, namely (a) in his capacity as a landlord who had been invited to purchase the occupancy rights under section 53 of the Tenancy Act, and (b) in his capacity as an occupancy tenant of agricultural land in the village who had a right to claim pre-emption under the provisions of the Punjab Pre-emption Act. He did not mention expressly or by implication that the landlord was an heir under section 59 of the Tenancy Act and that in his capacity as such he had a third right to pre-empt the sale under the provisions of the Punjab Pre-emption Act. This omission is significant and can be attributed only to the fact that the learned Judge did not think that the Punjab Pre-emption Act had conferred any right upon a landlord in his capacity as such to pre-empt a sale of occupancy rights.

The next authority which has a bearing on the point of law which has arisen in the present case is *Ahmad Khan v. Jang Baz Khan* (1). In this case Campbell J. held that the landlord of an occupancy tenancy (*qua landlord*) is not entitled to sue under section 21 of the Punjab Pre-emption Act, 1913, for pre-emption of that tenancy against a person having a superior right of pre-emption under section 15 (a) or (b) of the said Act. According to the learned Judge landlords have no rights at all under the Pre-emption Act, and hence the landlords in that case could not succeed against the co-sharers. In the course of his judgment the learned Judge observed as follows :—

“ He (the landlord) has come into Court as a plaintiff to assert a right which he does not possess under the law of pre-emption.
 * * * His position is much more favourable than that of any pre-emptor, and this is why we find that section 15 of the Punjab Pre-emption Act confers a right on an occupancy tenant to pre-empt his landlord's proprietary land [section 15 (c) *fourthly*] but confers no right on the landlord to pre-empt in that capacity his occupancy

(1) A. I. R. 1924 Lah. 210.

tenant's rights in land owned by himself, Pala Singh and confers a right to pre-empt those rights upon other persons, who are owners in the same estate but otherwise are in no way connected with the tenancy." ^{v.} Sukha Singh and another

Bhandari J.

The only other case which requires to be noticed is the decision of Falshaw, J., himself which is now under appeal. While referring to the provisions of section 59 of the Punjab Tenancy Act, the learned Judge observes as follows :—

“ The argument of the learned counsel for the appellant is that in view of the heading and the marginal summary and the contents of the section read together, the fact that the landlord is mentioned in subsection (4) means that he is also to be regarded as an heir. It is, however, quite clear from the words of the section that the position of the landlord of a deceased occupancy tenant is quite different from that of any of the other persons mentioned in the section, and that when land occupied by a tenant who dies without heirs reverts to the landlord, the latter does not succeed to the land as an heir, but his already existing proprietary right in the land becomes supplemented by the right also to enter into possession of the land through the extinction of the occupancy rights of the deceased tenant. He is, therefore, not an heir and so not a person entitled to bring a suit for pre-emption under section 15 (c) *thirdly* of the Pre-emption Act.”

For these reasons I entertain no doubt in my mind that a landlord cannot be regarded as an heir to a deceased occupancy tenant. It may be that when an occupancy tenant dies without leaving any heirs his occupancy rights merge in the rights of ownership of the landlord and for all practical purposes devolve on the

Pala Singh v. Sukha Singh and another
 Bhandari J. landlord but this devolution takes place not because the landlord is an heir but because the rights themselves have ceased to exist. I would accordingly uphold the order of the learned Single Judge and dismiss the appeal with costs.

SONI, J. I agree.

CIVIL APPELLATE

Before Falshaw and Kapur, JJ.

DES RAJ,—*Plaintiff-Appellant,*

versus

THE DOMINION OF INDIA,—*Defendant-Respondent.*

Regular Second Appeal No. 591 of 1948

Government of India Act, 1935, section 240—Applicability—Services terminated according to conditions of the contract of service.

D. R. joined the N. W. R. as a Signaller. In December 1920 his services were dispensed with due to retrenchment. In June 1924, he was re-employed as Signaller under the orders of Superintendent of Telegraphs, Lahore, and in 1942, he was working as Assistant Station Master, Ordinary Grade. On 9th October 1942, he was placed under suspension for certain irregularities committed by him and on 3rd November 1942, he was discharged from service and was given one month's pay in lieu of notice. In January 1946, he filed a suit for declaration that his reduction and discharge from service was illegal and inoperative and that he is still in service.

Held, that section 240 of the Government of India Act was not applicable as the services of the plaintiff had been terminated according to the conditions of his contract of service. Section 240 only applies where a person is "dismissed or reduced in rank". These are technical words used in cases in which a person's services are terminated for misconduct.

Regular Second Appeal from the decree of Shri Mani Ram, Senior Sub-Judge, with enhanced appellate powers,

1951

Nov. 26th