(10) The only other point argued by the learned counsel for the respondents is that the land of which possession is sought by the plaintiff-appellants has not been stated with particulars in the plaint. On a reference to the plaint, we find that the particulars of the land corresponding to 224 Bighas 5 Biswas originally belonging to Dilsukh and Smt. Jiwani in respect of which the decree was passed in 1909 are given in para 6 of the plaint, as recorded in the Jamabandi for the year 1945-46. The killa numbers allotted to the defendants on account of their share of that joint holding in repartition proceedings have been stated in para 7 of the plaint while the land kept joint measuring 62 Kanals 8 Marlas has been described by Killa numbers in para 8 of the plaint. The land in possession of each of the defendants is mentioned in para 10 of the plaint. In the nature of things, the plaintiff-appellants could not particularise 39 Kanals 10 Marlas of land to which they laid their claim in the plaint. This area has now been found to be only 9 Kanals 10 Marlas. The land kept joint has been separately described in para 8 of the plaint. There is, therefore, no difficulty in decreeing the suit of the plaintiff-appellants for possession of the land described in para 7 of the plaint to the extent of 9 Kanals 10 Marlas and for joint possession of land measuring 62 Kanals 8 Marlas described in para 8 of the plaint to the extent of one-half, as they have been found to be entitled to one-half of the land left by Dilsukh and Smt. Jiwani.

(11) For the reasons given above, this appeal is accepted and the suit of the plaintiff-appellants is decreed as above with costs throughout.

MEHAR SINGH, *C.J.*—I agree.

K.S.K.

APPELLATE CIVIL

Before D. S. Tewatia, J.

ASA NAND,—*Appellant.*

versus

SWATANTARPAUL SINGH, ETC.,—*Respondents.*

R. S. A. No. 136 of 1968.

May 4, 1970.

Punjab Pre-emption Act *(1 of 1913)—Sections 3, 5 and 15—"Village immovable property"—Whether has to be within the limits of* abadi deh—*Construction of a house on waste land—Whether amounts to reclamation thereof.*

Held, that a bare perusal of the definition of "Village immovable property" as given in section 3 of Punjab Pre-emption Act makes it clear that any land situated within the limits of a village, which is not an agricultural land, is to be considered 'village immovable property'. There is no justification for the construction of the expression "within the limits of a village" as being synonymous to the expression 'within the *abadi deh*. Hence a village immovable property can be situated even outside the limits of *abadi deh*. (Para 4).

Held, that the construction of a house on the waste land does not tantamount to the reclamation thereof. The reclamation of waste land means to make it culturable or fit for agricultural purposes and the construction of a house over it cannot amount, by any stretch of imagination, to the reclamation of the said land. (Para 5).

Regular Second appeal from the decree of the Court of Shri V. P. Aggarwal, III, Additional District Judge, Gurgaon, dated the 26th day of December, 1967 affirming that of Shri H. C. Gupta, Sub-Judge 1st Class, Palwal dated the 29th May, 1967 decreeing the suit to the effect that Desh Paul Singh plaintiff No. 3 would pre-empt half share in the land in suit on payment of Rs. 1,350, Swatantar Paul Singh would pre-empt one-fourth share on payment of Rs. 675 and Gajinder Partap Singh would pre-empt 1/4 share on payment of Rs. 675. These amounts would be deposited on or before 30th June, 1967 and in case of default on the part of any of them the next pre-emptor would deposit the amount in default on or before 31st July, 1967 elucidate it further if there would be default on the part of Swatantar Paul Singh, then Gajinder Partap Singh would deposit the amount in default on or before 31st July, 1967 and likewise the position would be in case of default made by Gajinder Partap Singh and in that case Swatantar Paul Singh would deposit the same amounts within the time fixed, the respective parties would take the possession of their respective shares. In case of default on the part of any one of them, the suit with respect to his claim would be deemed as dismissed with costs. The amount already deposited would be withdrawn by the plaintiffs as a whole body and would not be given a credit in the amounts to be so deposited and leaving the parties to bear their own costs presently.

The lower appellate Court however directed that the vendees would be entitled to remove the MALBA within three months from today and the decree would not be executed within these three months.

H. L. SARIN, SENIOR ADVOCATE, for the appellants.

A. L. BAHRI, ADVOCATE, for the respondents.

JUDGMENT

D. S. TEWATIA, J.—This appeal arises from a suit filed by the plaintiff-respondents for possession of the land in dispute claiming the

right to pre-empt the sale on the ground of their having a superior right of pre-emption as compared to the vendees, the defendant appellants in this case. The defendants, on the other hand, in their written statement, pleaded that the plaintiffs had no right of pre-emption, as the land at the time of sale was *banjar qadim* and defendants 1 and 2 had reclaimed the same. It was also pleaded that the defendants had constructed a house on the land in dispute prior to the sale as well as subsequent to the sale and had spent a lot of money in affecting improvements thereon and since the guardian of the plaintiffs had seen them effecting improvements on the said land, they were estopped from filing the suit. They also pleaded that they were tenants over the land at the time of the sale and the sale was not pre-emptible. On the basis of the pleadings of the parties, the trial Court framed the following issues—

"1. Have the plaintiffs better right of pre-emption ?

2. Has the sale money been actually paid or bona fide ?

3. What is the market value of the land in suit ?

4. Are the vendees tenants over the land in dispute since long including the date of sale and thus is the present suit incompetent ?

5. Is the land in dispute waste and have the vendees, reclaimed it and is, therefore, the suit incompetent ?

6. Have the vendees made the improvements and if so, what amount they are entitled to ?

7. Is there estoppel against the plaintiffs ?

8. Are the vendees entitled to cost of the sale ?

9. Relief."

The trial Court decreed the suit. However, on appeal by the defendants, the first appellate Court modified the decree of the trial Court to the extent that the defendants shall be entitled to remove the *malba* from the disputed land within three months from the date of the decision and dismissed the appeal. It is against this decision of

the Additional District Judge, Gurgaon, dated 26th December, 1967, that the present appeal has been preferred to this Court by the defendants.

(2) Mr. H. L. Sarin, learned counsel for the appellants, has urged that the sale in question was not pre-emptible, as the land in dispute was not an agricultural land, as alleged by the plaintiff-respondents in their plaint. The defendant-appellants, in their written statement nowhere agitated that since the land was not an agricultural land, so the pre-emption suit was not maintainable, and accordingly no issue was framed by the Court on this point. An attempt was made by the defendants during the pendency of the appeal before the lower appellate Court to secure permission to amend the written statement, but their application to that effect was not allowed and the lower appellate Court had given good reasons for the same. I have also not been persuaded by the learned counsel for the appellants to permit them to rake up that point in this second appeal. However, even if, for the sake of argument, the disputed land is not considered to be an agricultural land, it is not going to make any difference to the fate of the case, because section 15 of the Punjab Pre-emption Act is attracted not only to the sale of the 'agricultural land', but also to the sale of the 'village immovable property' which expressions are defined in section 3 of the said Act as follows :—

> "3. In this Act, unless a different intention appears from the subject or context,—
>
> (1) 'agricultural land' shall mean land as defined in the Punjab Alienation of Land Act, 1900 (as amended by Act 1 of 1907), but shall not include the rights of a mortgagee, whether usufructuary or not, in such land ;
>
> (2) 'village immoveable property' shall mean immoveable property within the limits of a village other than agricultural land ;
>
> * * * * *."

(3) Since the 'agricultural land' as defined in the Punjab Pre-emption Act means 'land' as defined in the Punjab Alienation of Land Act, so it is pertinent to notice at this stage the definition of 'land' as

given in sub-section (3) of section 2 of the Punjab Alienation of Land Act, which is as follows :—

"2. In this Act, unless there is anything repugnant in the subject, or context,—

* * * * *

(3) the expression 'land' means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes—

(a) the site of buildings and other structures on such land ;

(b) a share in the profits of an estate or holding ;

(c) any dues or any fixed percentage of the land revenue payable by an inferior landowner to a superior landowner ;

(d) a right to receive rent,

(e) any right to water enjoyed by the owner or occupier of land as such ;

(f) any right of occupancy ;

(g) all trees standing on such land."

(4) Learned counsel for the appellants in this case has tried to show that the land in dispute is not the village immovable property, for the reason that it lies outside the *abadi deh* of the village. A bare perusal of the definition of the 'village immovable property' makes it clear that any land situated within the limits of a village, which is not an agricultural land, is to be considered 'village immovable property.' The learned counsel has tried to construe the words 'within the limits of a village' as being synonymous to the expression 'within the *abadi deh*'. I am afraid, there is no justification for the construction which the learned counsel has tried to put on the words 'within the limits of a village'. He has referred me to a decision of this Court

reported in *Dittu Ram* v. *Balwant Rai and others* (1), to show that once it is held that the land in dispute is not an agricultural land, then nothing else remains in the case and the same is bound to be dismissed. The principle enunciated in *Dittu Ram's case* (1) is not at all applicable to the facts of the present case, because in that case the land, which was the subject-matter of the sale, was situated within the municipal limits of Hissar town and, therefore, the plaintiff in that case could only succeed if the land in dispute was held to be an agricultural land, otherwise the town immovable property did not attract the application of section 15 of the Punjab Pre-emption Act and so when in that case it was held that the land in dispute was not an agricultural land, there was no option but to dismiss the suit. The facts of the case in hand are entirely different. Here, the land in dispute is situated in the village and even if it is held that it is not an agricultural land, it still remains the 'village immovable property' and provisions of section 15 will be applicable to the land in dispute in this case.

(5) The learned counsel for the appellants has next drawn my attention to section 5 of the Punjab Pre-emption Act which reads—

"5. No right of pre-emption shall exist in respect of —

(a) * * * * *;

(b) the sale of agricultural land being waste land reclaimed by the vendee.

Explanation.—For the purposes of this section the expression 'waste land' means land recorded as *banjar* of any kind in revenue records and such *ghair mumkin* lands as are reclaimable."

and has tried to make out a case that since the land in dispute was a waste land, being *banjar qadim*, so the construction of a house by the appellants on that land tantamounts to the reclamation of the said waste land and thus the sale of the said land is not pre-emptible in view of section 5 of the Punjab Pre-emption Act. I am afraid, there is no merit in this contention of the learned counsel either, because reclamation of waste land means to make it culturable or fit for agricultural purposes and the construction of a house over it cannot amount by any stretch of imagination, to the reclamation of the said land.

(1) 1959 P.L.R. 869.

(6) The learned counsel for the appellants has lastly urged, basing his argument on a decision of this Court reported in *Shankar Singh* v. *Chanan Singh*, (2), that in a suit for pre-emption a specific ground, on which a preferential right of pre-emption is sought by the plaintiff, must be taken up in the suit within the period of limitation, otherwise after the period of limitation he cannot be permitted to specify the ground or urge another ground if he failed to prove the ground already urged in the plaint after the expiry of the period of limitation. The learned counsel urged that once it is held that the land in dispute is not an agricultural land, then even if the land is held to be the village immoveable property, the suit of the plaintiff cannot be decreed, because once he fails on one ground specified by him in his plaint he cannot urge another ground after expiry of the period of limitation, and for this submission he has tried to draw sustenance from the following observations of Mehar Singh, C. J., in *Shankar Singh's case* (2)—

> "In this case all that Chanan Singh, plaintiff did was to say that the vendors are his collaterals, but section 15 of Punjab Act 1 of 1913 in 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."

I am afraid, this ruling again is not relevant to the facts of the present case, because the pre-emptors have not urged any new ground to establish their superior right of pre-emption. Here, at best, the land in dispute was misdescribed as being an agricultural land, though the same happens to be the village immoveable property. However, be that as it may, the appellants cannot make out any point from the fact of the land not being the agricultural land, because they cannot be allowed to rake up this point at this stage.

(2) 1968 P.L.R. 455.

(7) For the reasons recorded above this appeal fails and the same is dismissed, but there is no order as to costs. The appellants are directed to remove the *malba*, if any, from the land in dispute within three months from today.

K. S. K.

REVISIONAL CIVIL

Before A. D. Koshal, J.

CALCUTTA INSURANCE, LTD.,—*Petitioner.*

versus.

BHUPINDER SINGH, ETC.,—*Respondents.*

C. R. No. 230 of 1970.

May 5, 1970.

Motor Vehicles Act (IV of 1939)—Section 110-A—Indian Succession Act (XXXIX of 1925)—Section 306—Claim for compensation under section 110-A for personal injury—Claimant dying during the pendency of the application—Heirs of the deceased claimant—Whether entitled to prosecute the application.

Held, that where an application is filed under section 110-A of Motor Vehicles Act, by a person claiming compensation not on account of the death of another but for injuries to himself, in such a case the right to prosecute the action must be regarded as a personal one which does not survive on the death of the applicant to his heirs by virtue of the rule expressed in the maxim *actio personalis moritur cum persona* which stands adopted by the legislature in section 306 of the Indian Succession Act. This section leaves no room for doubt that cases of personal injury not resulting in the death of the person injured give rise only to a personal action which the executors or administrators of that person are not entitled to continue on his demise. (Para 3).

Petition under article 227 of the Constitution of India read with section 115 C.P.C. for revision of the order of Shri Pritam Singh Pattar, Motor Accident Claims Tribunal, Amritsar dated 29th January, 1970, accepting the application of Bhupinder Singh and Harinder Kaur and ordering to be brought on the file as legal representatives of the petitioner Kartar Singh deceased.

V. P. GANDHI, ADVOCATE, for the petitioner.

G. S. VIRK, ADVOCATE, for respondent Nos. 3 & 4.