subsequently reviewed as the Superintending Canal Officer has no such power of review. My attention has been drawn to a decision of Full Bench in *Deep Chand and others* v. *Additional Director, Consolidation of Holdings and another* (1), that the inherent powers reserved in section 151 of the Code of Civil Procedure cannot be resorted to for permitting a judicial or *quasi*-judicial tribunal to vary or alter any order passed by it on the ground that it was later considered to be erroneous on the merits. Moreover, the decision of the Superintending Canal Officer made more than three years later on 18th March, 1967, though it had the effect of upsetting his earlier decision of 31st of January, 1964, could not be deemed to be in the exercise of any power under the Act. His earlier decision of 31st of January, 1964, had become conclusive. Once the decision made on the basis of sections 30-A and 30-B has been confirmed by the Superintending Canal Officer and the scheme as approved by the Divisional Canal Officer has been accepted, it cannot subsequently be disturbed either by the Superintending Canal Officer himself or by any other authority. It is not necessary to refer to any other point sought to be made by the petitioner.

I find that to the facts of the case, the provisions of section 30-A (1) (b) are attracted and not of section 20. The impugned order (Annexure A), passed by the Superintending Canal Officer on 18th March, 1967, was without jurisdiction and void. The petition is, therefore, allowed. The petitioner is entitled, in the circumstances, to the issuance of writ of *certiorari* quashing the impugned order. I order accordingly. In the circumstances, I will leave the parties to bear their own costs.

R.N.M.

APPELLATE CIVIL

Before R. S. Sarkaria, J.

HIRA AND OTHER,—*Appellants*

versus

BIR SINGH AND OTHERS,—*Respondents*

Regular Second Appeal No. 351 of 1963

November 11, 1967.

Ponjab Pre-emption Act (I of 1913) as amended by Act (X of 1960)—Ss. 13, 15(1)(b) Secondly and 17—Rght of pre-emption under—Whether vests in the specified relatives or in the whole line of heirs—Brother and brother's sons—Whether have equal and independent right—"Or" in various clauses of S. 15—Construction of.

(1) I.L.R. (1964) 1 Punj. 665 (F.B.)=1964 P.L.R. 318=1964 Current L.J. 128.

Held, that the Punjab Act 10 of 1960 amending the Punjab Pre-emption Act, 1913, has completely changed the basis of the law of pre-emption with regard to village immovable property and agricultural land by taking away the right of pre-emption which formerly vested in the whole line of heirs, however, remote and has given that right to a few specified relatives. As such, the brother and brother's sons of the vendor as mentioned in section 15(1) (b), Secondly of the Act have equal and independent right of pre-emption and not by way of heirs.

Held, that the various provisions of the Punjab Pre-emption Act are to be construed in harmony rather in collision with each other. If section 13, is not to be rendered meaningless and section 17 otiose the word 'or' in the various clauses of section 15 has to be construed merely as a connecting term for persons having a co-ordinate status or equal right of pre-emption. It may be, read, as an alternative, disjunctive word only in the sense that as among these persons with co-ordinate rights mentioned in a particular clause, anyone may individually or jointly with the others in the same clause institute a suit for pre-emption.

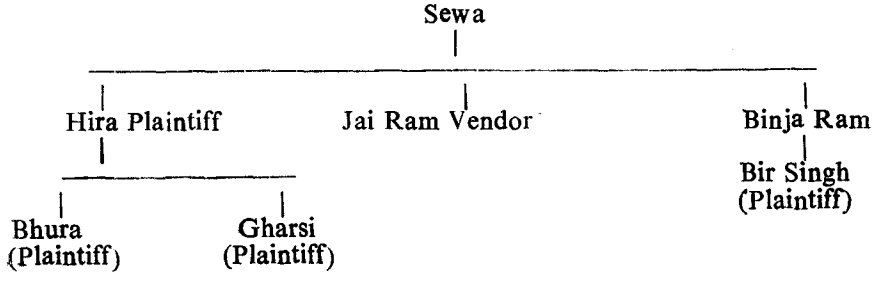
Second Appeal from the decree of the Court of the Senior Sub-Judge with Enhanced Appellate Powers, Hissar, dated the 17th October, 1962, *affirming with costs that of the Sub-Judge, 1st Class, Hissar, dated the 11th February,* 1960, *granting a decree for possession of* 1/2 *of the suit land, through pre emption, of the other half in favour of the plaintiff and of the rival plaintiffs against the vendees and further ordering that both sets of the pre-emptors would deposit the amount by 31st March,* 1960, *failing which their suits would stand dismissed.*

G. C. MITTAL, ADVOCATE, for the Appellants.

R. C. DOGRA, ADVOCATE, for Respondent No. 1

JUDGMENT

SARKARIA, J.—The following pedigree table will be helpful in understanding the facts giving rise to this Regular Second Appeal No. 351 of 1963:—



Jai Ram (shown in the above pedigree table), sold his 1/3rd share in 633 Kanals and 10 Marlas of agricultural land situated in the area of village Sarsana, tehsil Hissar, for Rs. 5,000, by a registered deed, executed on 5th July, 1957, but registered on 1st March, 1958. Bir Singh, son of Binja Ram instituted Suit No. 125 on 9th May, 1959, for pre-empting the sale on the ground that he was the vendor's brother's son. Another suit for pre-emption was instituted by Hira Lal, brother of the vendor, and his sons, Bhura and Gharsi, basing their claim on the provisions of clause *secondly* of section 15(1)(b) of the Punjab Pre-emption Act, 1913 (hereinafter referred to as 'the Act'). The trial Court (Sub-Judge, 1st Class, Hissar) decreed the suits holding that Bir Singh plaintiff was entitled to one-half, while Hira and his sons, Gharsi and Bhura were entitled to the remaining one-half of the property. Hira and his sons went up in appeal to the Senior Subordinate Judge, Hissar, claiming that each of the plaintiff-pre-emptors was entitled to 1/4th of the suit property. The Senior Subordinate Judge by his cryptic judgment, dismissed the appeal and affirmed the decree of the trial Court. Hira and his sons have come up in second appeal to this Court.

The learned counsel for the appellants contends that the "brothers or brother's son of the vendor", mentioned in clause *secondly* of section 15 (1)(b) of the Act, have been given an *equal* and *independent* right of pre-emption by the statute. This, according to the counsel, is the effect of the remodelling of the previous Act and the omission of the words 'in order of succession' by the amendment of 1960. The learned counsel also seeks to derive assistance from the provisions of section 13, which says:—

> "Whenever according to the provisions of this Act a right of pre-emption vests in any class or group of persons the right may be exercised by all the members of such class or group jointly, and if not exercised by them all jointly, by any two or more of them jointly, and, if not exercised by any two or more of them jointly, by them severally."

In support of his contention, the learned counsel has referred to a Single Bench judgment of this Court in R.S.A. 1615 of 1960, decided on 20th March, 1962, by Gurdev Singh, J., which was confirmed in Letters Patent Appeal by a Division Bench, consisting of Dulat and R. P. Khosla, JJ., It has also been urged that so far as the *distribution* of the property among the rival pre-emptors is

concerned, the case would fall under the residuary clause (e) of section 17 of the Act, and not under its clause (b). The argument is that under the Act, after the amendment of 1960, the right of pre-emption has been given to *specified persons* and *not* to the whole line of *heirs,* and that the old concept of maintaining the compactness of the village community, based on the agnatic theory of succession, has been done away with. In other words, it is contended that the "brother and the brother's sons" in the present case are not claiming as 'heirs', but only as *specified persons* in a group having an equal and independent right of pre-emption. It is argued that section 17 cannot be so construed as to altogether take away the substantive right given by section 15. On this point, reliance has been placed on *Fateh Mohammad and another* vs. *Fateh Mohammad* (1).

On the other hand, Mr. Dogra, the learned counsel for the rival pre-emptor, Bir Singh, contends that Gharsi and Bhura plaintiffs had no independent right of pre-emption, but could claim only through their father, Hira, who had a preferential right as against his sons. It is maintained that the principle of representation will apply to their case. It is impliedly suggested that the word 'or' in clause '*secondly*' of section 15(1)(b) of the Act means that *either* the 'brother' (Hira) or his 'sons' (Gharsi and Bhura) had a right of pre-emption, and, simultaneously, both of them could not have that right. But so far as Bir Singh is concerned, says the counsel, the same is not true because his father, Binja, is not a plaintiff and his uncle, Hira, could not under the said clause, represent him. According to the counsel, Bir Singh had an independent and equal right of pre-emption because he is not claiming along with and through his father, Binja. In short, Mr. Dogra maintains that the distribution of the suit property among the rival pre-emptors should be *per stirpes* and not *per capita.*

I had reserved orders in this case because the rule laid down by the Letters Patent Bench in *Jangli and others* v. *Lakhmi Chand and others* (2), was being reconsidered by a Full Bench of this Court in *L.P.A.* 340 *of* 1964 (3). The judgment of the Full Bench

(1) 1947 PL.R. 160.
(2) I.L.R. (1965) 2 Punj. 823=1965 P.L.R. 919.
(3) I.L.R. (1968) 1 Punj. 104 (F.B.).

has since been pronounced on 29th September, 1967, and the *ratio* of *Jangli's case* has been over-ruled. The view taken by the referring Bench consisting of Falshaw and Khanna, JJ., to the effect, 'that section 13 is not intended to confer any right of pre-emption and that all that it means is that one out of a group of persons on whom a right of pre-emption is conferred, can exercise that right alone when others are not inclined to do so, but he can only do so in respect of the whole of the land sold by joint owners if he enjoys a right of pre-emption in respect of each of the vendors', has been approved. Only to this extent the decision of the Full Bench in L.P.A. 340 of 1964 (*Moti Ram and others* v. *Bakhwant Singh and others* (3), is material for the purpose of the case before me. The other points determined by the Full Bench do not arise in the instant case.

Here, the points for determination concern the interpretation of section 13, section 15(1)(b) *secondly* and section 17 of the Act. The first question is: whether this clause *secondly* read with sections 13 and 17 confers on the brother and the brother's sons an *equal* and independent right of pre-emption in respect of the sale. The determination of this question depends to a great extent on the true import of the word 'or' used in the various clauses of section 15. At first sight, the use of the word 'or' appears to result in various alternatives being created and also in fixation of a preferential order among the persons grouped under a particular clause. In that view of the matter, the brother will have a preferential right of pre-emption over the brother's sons of the vendor. That is to say, the right of brother's sons to pre-empt would arise only if the brother does not exercise that right. Such an interpretation, in my view, will not only render nugatory the provisions of section 13, but will also make section 17 wholly redundant. This, therefore, does not seem to be the correct approach. "An author", says Maxwel, "must be supposed to be consistent with himself, and therefore, if at one place he expresses his mind clearly, it ought to be presumed that he is well of the same mind in another place unless it clearly appears that he has changed it. The work of the legislature is treated in the same manner as that of any other author". The various provisions of the Act, therefore, are to be construed in harmony rather than in collision with each other. If section 13 is not to be rendered meaningless and section 17 otiose, the word 'or' in the various clauses of section 15 has to be construed merely as a connecting term for persons having a co-ordinate status

or equal right of pre-emption. It may be read, as an alternative, disjunctive word only in the sense that as among those persons with co-ordinate rights mentioned in a particular clause, anyone may individually or jointly with the others in the same clause (in view of section 13) institute a suit for pre-emption.

For further elucidation of the point, it will be worthwhile to have a brief peep into the history of this enactment. In respect of agricultural land and village immovable property, pre-emption in Punjab enabled ancestral heirs to retain property in the family and thus to preserve the integrity and homogeneity of the village community by the exclusion of strangers. It was thus a branch of the tribal law of succession in land, and its origin is to be found in the agnatic theory of succession. The Punjab Pre-emption Act, 1913, recognised the rights of the relatives to claim pre-emption (with regard to agricultural land and village immovable property) more liberally than the Punjab Laws Act. The material part of section 15 of the Act of 1913 reads as follows:—

> "15.....The right of pre-emption in respect of agricultural land and village immovable property shall vest—
>
> (a) where the sale is by a sole owner or occupancy tenant or, in the case of land or property jointly owned or held, is by all the co-sharers jointly, *in the persons in order of succession*, on the death of the vendor or vendors, to inherit the land or property sold;
>
> (b) where the sale is of a share out of joint land or property, and is not made by all the co-sharers jointly,—
>
> *firstly*, in the lineal descendants of the vendor *in order of succession;*
>
> *secondly*, in the co-sharers, if any, who are agnates *in order of succession;*
>
> *thirdly*, in the persons, not included under *firstly* or *secondly* above, *in order of succession*, who but for such sale would be entitled, on the death of the vendor, to inherit the land or property sold;
>
> *fourthly*, in the co-sharers:"

The old section 15 aimed to secure family basis of the village, and when that failed, to preserve the integrity of the village. The broad principle was that the legal heirs came in first, then the co-sharers, then the village proprietors, and finally the occupancy tenants. Within each of the groups, the nearer in succession excluded the more remote. This was the import of the phrase 'in order of succession' occurring in clauses (a) and (b) of the old section 15, which conferred the right of pre-emption on the *whole line of heirs* and not merely on the nearest presumptive heirs. The Amending Act 10 of 1960 remodelled the old section, deleted the words 'in order of succession', limited the right of pre-emption on the basis of consanguinity to a few specified relatives: and introduced a new feature as a measure of land reform-giving tenants also a right of pre-emption in respect of land comprised in their tenancy. The Amending Act left untouched the old section 13. In the recast section 15 (as further amended by Punjab Act No. 13 of 1964), in sub-clause (1), clauses *first, secondly,* and *thirdly,* are classified *only a few* nearest relatives who under the Hindu Succession Act would be heirs of the vendors, Under the *First* clause come 'the son or daughter or son's son or daughter's son of the vendor'. Under clause '*secondly*' come 'the brother or brother's son of the vendor'. In clause *thirdly* are mentioned 'the father's brother or father's brother's son of the vendor'. Clause *fourthly* relates to tenants. Persons mentioned in clause *first* will have priority over those mentioned in clause *secondly,* and similarly those specified in clause *secondly* will have a preferential right as against those mentioned in clause *thirdly.*

The preferential order fixed between persons in one clause over those of the succeeding clause as also the arrangement of the names of relatives in a particular clause, is not strictly according to the order of succession among heirs laid down by the Hindu Succession Act. For instance, under the Hindu Succession Act the property of a male Hindu dying intestate, will, according to the schedule appended under section 8 (class II), first goes to the father; then to son's daughter's son, son's daughter's daughter, brother and sister. Thereafter, there is entry No. 3 under class II in which four categories of cognates are mentioned. The 'brother's son' comes after 6 cognates and his name finds mention in entry No. 4 under class II. The pre-emption Act omits the father and the first two categories of heirs mentioned in entry No. 2. It mentions brother and thereafter omits all the cognates heirs is entry No. 3, and then mentions brother's son.

The amending Act has deleted clauses (c) and (d) of section 17, while clauses (a) (b) and (e) are allowed to remain as before.

The difficulty in this case arises with regard to the proper application of section 17. To some extent, this difficulty is the outcome of the piecemeal amendments made by the various Punjab Acts. Whereas Punjab Act 10 of 1960, as already observed, has completely changed the basis of the law of pre-emption with regard to village immovable property and agricultural land by taking away the right of pre-emption which formerly vested in the whole line of heirs howsoever remote, and given that right to a few *specified relatives*, it retains the old anachronistic phraseology, 'if they claim as heirs' in clause (b) of section 17. To be more precise, if in the present case the brother (Hira) and the brother's sons (Bhura, Gharsi, and Bir Singh plaintiffs) of the vendor are deemed to be claiming pre-emption 'as heirs', then *prima facie* clause (b) of section 17 would appear to govern the case, and, in that event, the whole of the suit land would go to the brother, Hira plaintiff, and none to the other three plaintiffs who are the brothers' sons of the vendor. Such an interpretation will be tantamount to giving a right by one hand (viz., sections 15 and 13) and taking away by the other. There is no direct authority on the point as to how land would be distributed among rival pre-emptors claiming as specified relatives under clauses *first*, *secondly* and *thirdly*, in the new section 15(1). But under the old Act a similar point came up for determination before a Division Bench of the Lahore High Court consisting of Chief Justice Abdul Rashid and Mr. Justice Mehar Chand Mahajan. In that case (*Fateh Mohammad and another* vs. *Fateh Mohammad* (1), two suits by rival pre-emptors were tried in respect of the same sale. First suit was instituted by Fateh Mohammad, son of Ibrahim, who claimed the right on the ground that he was a collateral of the vendor and that he was a proprietor in the Patti in which the land was situated. The second suit was instituted by Fateh Mohammad, son of Kalu and Sardar Ali. They claimed on the basis of their being co-sharers in the Khata and also as owners in the Patti in which the land was situated. The trial Judge held that the plaintiffs in both the suits had equal pre-emptive rights on the ground of their being proprietors of the Patti, and decreed both the suits to the extent of one-half of the land each. Fateh Mohammad, son of Ibrahim appealed against that decision. His appeal was allowed and a decree for the entire land was passed in his favour. Fateh Mohammad, son of Kalu and

Sardar Ali filed two second appeals in the High Court. A learned Single Judge maintained the order of the lower appellate Court and dismissed both the appeals. Against the decision, two letters patent appeals were preferred. Allowing those appeals, Mahajan, J., delivering the judgment of the Division Bench, observed:—

> ".....section 17(e) of the Act should be interpreted in a manner which makes it consistent with the opening words of the section as well as with section 15(b), Fourthly. In other words when two sets of pre-emptors have an equal right of pre-emption then the construction placed on section 17 should be such as does not destroy the right of the one or of the other .....In my judgment, clause (c) of section 17 has application only to cases where two conditions are fulfilled, i.e., (1) where both sets of pre-emptors are owners in a sub-division, and (2) where both of them are entitled to take a share in the Shamilat in a certain proportion. The clause, however, has no application where one set of pre-emptors is not entitled to share the Shamilat in any proportion whatsoever with the other set. In other words, when the Shamilat is divisible in certain proportions between both sets of pre-emptors, then this clause can be aptly applied. But where one of the persons has a zero share or has no share at all and is, therefore, not entitled to share it in any proportion with his rival, in these circumstances, this clause ceases to have any application whatsoever. The only other clause that can govern such a case is clause (e) of the section. This is in the nature of residuary clause. The basic principle of section 17 is mentioned in its opening words and clause (e) states that ordinarily rival pre-emptors having equal pre-emptive rights will share equally unless the case falls within any one of the clauses (a) to (d). The view that I am taking is also supported by the wording of clause (b) of section 17. This clause deals with the claim of rival heirs. If a person is not an heir at all and he could not be one if he is entitled to a zero share, then clause (d) could not be applied to such a case. Similarly, an owner in a recognised sub-division with a zero share in the Shamilat is not entitled to share it in any proportion with his rival, and his case cannot fall within the ambit of that clause. Once his

right is conceded under section 15, the section dealing with the exercise of the right cannot defeat him."

Though by the subsequent amendments of the Act, the provisions of sections 15 and 17, which were under consideration of the learned Judges in that case, have either been deleted or drastically modified, yet the principle of interpreting sections 15 and 17 laid down in *Fateh Mohammad's case* endures. Respectfully following that principle, I would say that the present case falls under the residuary clause (e) and not under clause (b) of section 17. The reasons, as already observed, are two-fold: Firstly, any other interpretation would destroy the equal right of pre-emption given to the brother's son of the vendor by section 15(1)(b) *Secondly,* and would also render section 13 meaningless. Secondly, under the first three clauses of section 15(1)(b) the right of pre-emption has been given to a few specified relatives and not to "the heirs," as such. It cannot, therefore, be said that the plaintiffs "claim as heirs" within the contemplation of clause (b) of section 17.

For reasons aforesaid, I would allow this appeal with costs, holding that the four rival plaintiff pre-emptors shall share the suit land in equal shares under clause (e) of section 17 of the Act.

K.S.K.

CIVIL MISCELLANEOUS

Before R. S. Sarkaria, J.

CHHOTA SINGH AND OTHERS,—*Petitioners*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 69 of 1967

November 15, 1967

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Ss. 32-D, 32-K, 32-P and 40—Advice of Pepsu Land Commission not included in the statement preferred under S. 32-D—Whether a valid ground for re-opening the matter—Clerical or arithmetical mistake in order—Whether can be made an execuse for review—Phase at any time in S. 32-D(4)—Meaning of—Proceedings