

**Krishna Ram (deceased) v. Krishna Charitable Trust and another  
(D. V. Sehgal, J.)**

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right of pre-emption is a piratical right. The appellants are seeking to enforce a right of pre-emption based on custom. In the wider interest of Institution, the Government exercised its power under sub-section (2) of Section 8 of the Act. The appellants will continue in possession till they are evicted in due process of law.

(18) The College was being run in Lahore and after partition of the country, it was opened in Ambala City. It is in the heart of the town and there is no scope for extension except by purchasing land adjoining the College. It could not be disputed that there was a *bona fide* need to extend this Institution. There is some criticism that some shops had been built on the land belonging to this Institution. It may have been done to overcome the financial stringencies. The College is a premier Institution and its results show that quite a large number of students secured high positions and came in the merit list. The College, to supplement its income for running the Institution, may have built shops on the road side. It is just possible that if it was not so done, the Municipal Committee or the Improvement Trust may have acquired that land for establishing a commercial complex. Probably keeping that in mind, the Institution built shops and rented out the same to augment the income and to save it from acquisition by the Municipal Committee or other authorities for establishing a commercial complex. The object of running such an Institution to impart education to the girls is laudable and we do not think any interference is called for. The appeal is dismissed. However, we leave the parties to bear their own costs.

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R.N.R.

*Before D. V. Sehgal, J.*

**KRISHNA RAM (deceased),—Petitioners.**

*versus*

**KRISHNA CHARITABLE TRUST and another,—Respondents.**

*Civil Revision No. 725 of 1987.*

October 3, 1988.

*Code of Civil Procedure (V of 1908)—S. 115—Vendors leasing the property and subsequently selling it to other party—Pre-emption suit decreed against the vendors—Whether the transaction of lease is real or facade which cannot be given effect.*

*Held*, that no exception can be taken to the plea but where the transaction of lease is not real but simply a facade that cannot be given effect to and cannot be set up against the successful pre-emptor. (Para 4).

*Held*, that the petitioner is entitled to actual possession of the land in dispute. Consequently, the petitioner is allowed, the impugned order of the learned Executive Court is set aside and it shall now proceed to execute the decree in accordance with law and get delivered actual possession of the land in dispute to the petitioner. (Para 6).

*Petition under section 115 C.P.C. for the revision of the Order of the Court of Shri D. S. Sheoran, H.C.S., Sub-Judge, IInd Class, Jagadhri, dated 25th August, 1986 ordering that the decree holder is only entitled to get the symbolical possession of the disputed property until and unless the lease deed is got declared to be a sham and bogus transaction. Now the warrants for delivery of symbolical possession be issued for 12th September, 1986.*

I. K. Mehta Sr. Advocate with Miss Anjali Sehgal, Advocate, for the Petitioners.

S. K. Goyal, Advocate, for the Respondents.

#### ORDER

*D. V. Sehgal, J.*

(1) Karta and Banarsi, brothers of the petitioner herein, sold the land in dispute to the respondent,—*vide* registered sale deed dated 12th November, 1986. A week earlier to this sale a lease deed was executed between them and Varinder Kumar on 4th November, 1980 whereby the same land was allegedly leased out to the latter. In the sale deed there is a mention that the land is on lease with Varinder Kumar who is paying Chakouta to the vendors and that after the sale he shall pay the same to the vendees. The petitioner filed a suit for pre-emption of the sale dated 12th November, 1986 and the suit was ultimately decreed. He sought to execute the decree and secure possession of the land in dispute but the same was resisted by Varinder Kumar who contended that the petitioner is entitled to symbolical possession only for the reason that he holds the status of a tenant on the land in dispute. This objection has prevailed with the learned Executing Court and,—*vide* order dated 25th August, 1986 it has held that the petitioner is entitled to get only symbolical possession of the disputed land. The petitioner thus being aggrieved has filed the present revision petition.

Krishna Ram (deceased) v. Krishna Charitable Trust and another  
(D. V. Sehgal, J.)

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(2) I have heard the learned counsel for the parties. It has been contended that the lease deed was merely a camouflage to defeat the rights of the prospective pre-emptor and this being the position Varinder Kumar cannot be allowed to continue in possession of the property. The learned Executing Court has adverted to the statement of Varinder Kumar himself who appeared as D.W. 2 and made a categorical admission to the effect that the lease deed in his favour was got executed just to avoid right of pre-emption. This decidedly takes the wind out of the sails of the objectors. There can be no manner of doubt that the lease deed executed a week prior to the sale deed was simply a device to ward off the prospective pre-emptors. The contention of the learned counsel for the respondent is that Varinder Kumar was not a party to the suit for pre-emption. Varinder Kumar during the course of his statement had made a candid admission that he is not the real lessee. This contention is of no avail.

(3) The learned counsel for the respondent has no doubt referred to the fact that in the *Jamabandi* and *Khasra Girdawari* effect was given both to the lease deed and to the sale deed and mutation to this effect was also entered but the rights of the parties had to be determined by reference to the title deeds and in the context of the admission made by Varinder Kumar. I am of the positive view that he cannot resist actual possession of the property by the decree-holder petitioner.

(4) Learned counsel for the respondent then contended that the vendee can defeat the right of the pre-emptor by any lawful means and even by taking recourse to technical objections. No exception can be taken to this plea, but where the transaction of lease is not real but simply a facade that cannot be given effect to and cannot be set up against the successful pre-emptor.

(5) He then invited my attention to *Ram Kishan Dass and others v. Zaharia and others*, (1) and contended that actual possession of the property in dispute cannot be taken from a tenant. He also relied on the provisions of Order XXI, rule 36, Code of Civil Procedure. *Ram Kishan Dass's* (supra) is clearly distinguishable. In that case the property in dispute was purchased by the sitting tenant therein. The question which was debated was whether on purchase of the property by the tenant, he having attained a greater

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(1) 1968 P.L.R. Delhi Section 11.

title, the lesser one merged in it. It was rightly held that the pre-emptor steps into the shoes of the vendee from the date the sale took place. Therefore, the position that existed before the said sale is to be restored. It was in this situation that it was held that the tenant cannot be dispossessed in execution of the decree of pre-emption of sale.

(6) I am, therefore, of the considered view that the impugned order cannot be sustained. The petitioner is entitled to actual possession of the land in dispute. Consequently, this revision Petition is allowed, the impugned order of the learned Executing Court is set aside, and it shall now proceed to execute the decree in accordance with law and get delivered actual possession of the land in dispute to the petitioner. In the circumstances of the case, the parties are left to bear their own costs.

(7) The parties through their counsel are directed to appear before the learned Executing Court on 1st November, 1988.

S.C.K.

*Before M. M. Punchhi and Ujagar Singh, JJ.*

AKHARA SHRI BRAHAM BUTA AMRITSAR,—*Petitioner.*

*versus*

STATE OF PUNJAB and others,—*Respondents.*

*Civil Writ Petition No. 8539 of 1988 (O. & M.)*

October 10, 1988.

*Constitution of India, 1950—Arts. 14, 19, 25 and 26—Land Acquisition Act (I of 1894)—S. 17(1)—Trust properties of religious and charitable institution acquired invoking provisions of urgency—Immunity claimed from acquisition—Notification challenged as violative of fundamental rights—Such properties—Whether immune from acquisition—Acquisition—Whether destructive of fundamental right of religious sect to establish and maintain institution.*

*Held,* that Article 26 of the Constitution of India, 1950 does not guarantee the freedom to establish and maintain a religious and charitable institution at a particular place or to make it immune from acquisition under the provisions of the Land Acquisition Act, 1894. The free practice of religion presupposes the practising of it