ard on the reference unless the whole of the subject-atter of the reference is covered by the legal proceed-gs which have been instituted. Indeed the language section 35 itself is plain and the view of the Court low is in no way erroneous on the point.

No other matter was urged before me by the arned counsel for the parties. In the result, the peal as well as the cross-objections fail and are dis-issed but in view of the nature of the points invol-d, the parties are left to bear their own costs curred in this Court.

B.R.T.

FULL BENCH

fore Mehar Singh, A. N. Grover and Shamsher Bahadur, JJ.

MEHARAJ KISHAN,—*Appellant*

versus

TARA SINGH AND OTHERS,—*Respondents*

Execution Second Appeal No. 1530 of 1961.

1963

Feb. 26th.

Punjab Pre-emption Act (I of 1913)—Section 11—osit made by pre-emptor under—Whether exempt from chment—Benefit of the section re. immunity of deposit n attachment—Whether can be waived by pre-emptor.

Held, per Full Bench (Grover and Shamsher Bahadur, Mehar Singh, J. Contra)—that section 11 of the Punjab -emption Act, 1913, was enacted for the benefits of a dee and a pre-emptor and no public policy or interest erved or promoted by the immunity from attachment ch extends to a pre-emptor's deposit. The privilege he benefit can certainly be waived by agreement of the ies.

Held, per Mehar Singh, J.—The protection of section 11 he Punjab Pre-emption Act, I of 1913, is available

against a deposit made by the pre-emptor in a pre-emption suit after the dismissal of the pre-emption suit when the amount is sought to be attached by the pre-emptor's decree-holder, in execution of his decree against the pre-emptor. Any agreement of the parties in the money suit by the decree-holder against the pre-emptor cannot give sanction for attachment of the deposit in view of section 11, as the parties can not sanction what is expressly prohibited by the section.

Held, per Shamsher Bahadur, J.—The protection under section 11 of the Punjab Pre-emption Act, 1913, is available to a deposit made by a pre-emptor so long as the money paid in Court retains the character of a deposit of a pre-emptor as envisaged by section 22 of the Act, and cannot be set up after the suit has been finally disposed of.

Case referred by Hon'ble Mr. Justice D. K. Mahajan, on 13th December, 1961, to a larger Bench for decision owing to the importance of the question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Mehar Singh and Hon'ble Mr. Justice Shamsher Bahadur referred the case to a Full Bench, on 29th August, 1962, for decision of the following question of law involved in the case:—

> *"Whether protection of section 11, of Punjab Act No. 1 of 1913, is or is not available against a deposit made by the pre-emptor in a pre-emption suit, after the dismissal of the pre-emption suit, when the amount is sought to be attached by the decree-holder of the pre-emptor in execution of a decree against the pre-emptor and whether it makes any difference that the parties agreed in the money suit by the decree-holder against the pre-emptor that the amount of the deposit be attachable in execution of the decree ?"*

The Full Bench, consisting of Hon'ble Mr. Justice Mehar Singh, Hon'ble Mr. Justice A. N. Grover and Hon'ble Mr. Justice Shamsher Bahadur, after deciding the question referred to them returned the case to the Division Bench,

for decision on the above-mentioned Division Bench on 18th October. 1963.

Execution Second Appeal, from the order of the Court of Shri Radha Kishan Baweja, 1st Additional District Judge, Amritsar, dated the 19th July; 1961, affirming that of Shri Harish Chandra Gaur, Sub-Judge, Ist Class, Amritsar, dated the 6th April, 1961, accepting the objection petition with the order, that the amount of Rs. 2,000, cannot be attached and withdrawing the order of attachment issued by it.

M. R. MAHAJAN AND SAT DEV, for M. K. MAHAJAN, ADVOCATES, for the Appellant.

J. S. SHAHPURI AND L. S. WASU, ADVOCATES. for the Respondents.

ORDER

MEHAR SINGH, J.—The reference order of August 29, 1962, will be read as part of this judgment. In view of that order before this Bench the question for consideration is this— Mehar Singh, J.

> "Whether protection of Section 11 of Punjab Act I of 1913, is or is not available against a deposit made by the pre-empter in a pre-emption suit after the dismissal of the pre-emption suit when the amount is sought to be attached by the decree-holder of the pre-emptor, in execution of the decree against the pre-emptor, and whether it makes any difference that the parties agreed in the money suit by the decree-holder against the pre-emptor that the amount of the deposit be attachable in execution of the decree?"

The facts are given in sufficient detail in the reference order and there is no need to recapitulate the same here. The question has been clearly framed. It is

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in substance in two parts. [Reference order has not been printed as the facts have been given by Shamsher Bahadur, J., in his judgment. Editor].

Mehar Singh, J.

In the Punjab Pre-emption Act, 1913 (Act I of 1913), Section 11 reads—

> "No sum deposited in or paid into Court by a pre-emptor under the provisions of this Act or of the Code of Civil Procedure shall, while it is in the custody of the Court, be liable to attachment in execution of a decree or order of a Civil, Criminal or Revenue Court or of a Revenue Officer."

The language of the section is as clear as can be leaving no possible ambiguity in its meaning. It refers (a) to deposit or payment of a sum into Court, and (b) its immunity from attachment whilst it is in the custody of the Court. Once the deposit has been made or the sum paid in the terms of this section, the sum goes into the custody of the Court, and as long as it is in that custody, it is immune from attachment. This section does not refer even in the remotest manner to the result of any suit in connection with which the deposit might have been made or the sum paid into Court. It says plainly that the deposit once made or the sum once paid into Court shall be immune from attachment whilst it is in the custody of the Court. This is without reference to any other circumstance. The only condition is that the deposit be made or the sum paid into Court in accordance with section 11 and once that is done there can never be any attachment of the same whilst it is in the custody of the Court. The indirect object or effect of the deposit or the payment of the sum may be protection of the interest either of the vendee or the pre-emptor or say to a point of both; but in the prohibition enacted by this section there is not the least reference to any such object or the limitation of

the protection only while that object remains in existence. The plain language of the section conveying straight meaning is not affected by looking away from the section and asking why the deposit has been made or the sum paid into Court by the pre-emptor. This question does not arise from reading the plain language of the section, which can be given effect to without more than what it says. Two cases decided by the Lahore High Court have already been referred to in the order of reference which support this view. The first case in *Sulakhan Singh* v. *Sunder Singh* (1). In that case, like the present case, the pre-emptor's suit had been dismissed. Attachment of the amount deposited in the Court was sought by a decree-holder of the pre-emptor in execution of his decree against him. The learned Judge negatived this claim in view of section 11. The other case is *Ishar Singh* v. *Allah Rakha and another* (2), in which the pre-emption suit had been decreed and the amount deposited by the pre-emptor had become available to the vendee. In execution of his decree against the vendee, the decree-holder sought to attach the amount while still deposited in Court. Again another learned Single Judge negatived this claim upon the language of section 11. In both these cases during the arguments reliance for the contrary approach was placed on *Mohna Mal* v. *Tulsi Ram* (3). That case concerned section 15 of the Redemption of Mortgages (Punjab) Act, 1913 (Punjab Act II of 1913), which section is in these terms—

> "No sum deposited with the Collector by a petitioner under the provisions of this Act shall be attached by any Court or Revenue Officer."

The learned Judges in *Mohna Mal* v. *Tulsi Ram* (3), were of the opinion that this section is primarily for

(1) 1934 P.L.R. 250—A.I.R. 1934 Lah. 850.
(2) 1936 P.L.R. 906.
(3) I.L.R. 3 Lah. 141.

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the protection of the person depositing the money, and the intention of the legislature was that the money deposited under the provisions of this Act should be exempted from attachment in execution of a decree against the depositor. This consideration, however, does not apply to section 11 of Punjab Act I of 1913 because in that section prohibition from attachment of the deposit or the sum paid into Court is 'while it is in the custody of the Court'. No such words appear in section 15 of Punjab Act II of 1913 and so *Mohna Mal* v. *Tulsi Ram* (3), is no help in regard to the meaning and scope of section 11 of Punjab Act I of 1913. The Legislature, in so far as section 11 is concerned, by the very language of the section has left no possible doubt about its intention which is clearly stated that whilst the deposit made or the sum paid in Court remains in the Court, there is prohibition against its attachment. The prohibition is mandatory and it is obvious that there is no manner of getting away from it or around it. The learned counsel for the decree-holder has made reference to this observation of the learned Judges in *Abdus Salam and others* v. *Wilayat Ali Khan* (4):—

> "Money paid into Court by a plaintiff in pre-emption to be paid over in a certain event to the defendant in the suit is in custody of the Court until the result of the litigation is known."

The learned counsel says that section 11 be read subject to this limitation as in the observation of the learned Judges, but this observation was made by the learned Judges, in 1897, long time before Act I of 1913 was enacted, and the language of section 11 does not admit of any such limitation unless something more is read into it which is not admissible by reason of the clarity of the language of this section.

(4) I.L.R. 19 All. 256.

In either of the two cases, *Sulakhan Singh* v. *Sunder Singh* (1) and *Ishar Singh* v. *Allah Rakha and another* (2), the learned Judge concerned distinguished *Mohna Mal* v. *Tulsi Ram* (3), from the case he was considering and did not rely upon it. So far the matter seems to be clear beyond any possible argument.

The learned counsel for the decree-holder contends that though this may be the correct approach to the meaning and effect of section 11, the deposit or the sum paid, particularly after the dismissal of the pre-emption suit, is in the hands of the Court for the benefit of the pre-emptor or the person depositing or paying the amount in Court, and as such a person can always waive even a statutory protection of this type, so the judgment-debtors having waived protection under section 11 in the present case, the amount is attachable by the decree-holder in execution of his decree against them. The learned counsel further points out that the only case in which a person, for whose benefit such a protection is, cannot waive is where the protection is on the ground of public policy. In this respect he relies upon *Dupagunta Subramanian* v. *Govinda Peter Satyaradham and another* (5), a case under section 60 of the Code of Civil Procedure, in which the learned Judge has held that the provisions of that section are imperative and are intended to give protection to persons, being the employees referred to in that section, on grounds of public policy and not merely to confer a personal benefit upon them; and so the employee cannot waive the privilege given to him by this section. Now it is well settled that where a personal benefit is conferred by a statutory provision, unless it proceeds on grounds of public policy,

(5) I.L.R. 1942 Mad. 640=A.I.R. 1942 Mad. 391.

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in which case it cannot be waived, it may be waived by the person for whose benefit it has been enacted. On its plain language, section 11 does not show that it has been enacted for the benefit of any particular party. It is a section which enacts a prohibitory provision against the attachment of deposit or sum paid into Court in certain circumstances, without reference to its benefit to any party that may be concerned with it. It may be true that indirectly the effect of the deposit or the sum paid into Court may in certain circumstances benefit one or the other party to a pre-emption suit, but the prohibition enacted in this section is not connected in any manner with any such benefit to any party to such a suit. The prohibition, as pointed out, is directed against an attachment of sum deposited in or paid into Court whilst it is in the custody of the Court. The prohibition is operative as long as the sum remains in the custody of the Court, whether ultimately somebody else benefits by it does not ease the prohibition. The prohibition being imperative and it being directed as against what is in the custody of the Court, an act or omission of a party to a pre-emption suit or who was a party to a pre-emption suit before its final decision cannot sanction what is directly prohibited in clear language by the statutory provision. The prohibition being imperative and directed in regard to what is in the custody of the Court and not having direct reference to the benefit or advantage of the sum deposited or paid into Court in relation to any particular party, the question of it having been enacted or not on the ground of public policy does not in the circumstances really arise. If power could be assumed in a party to a pre-emption suit, after the decision of the suit, to sanction attachment of the sum deposited in or paid into Court whilst in the custody of the Court, the question of waiver or personal benefit or advantage could come in for consideration, but there

is no justification for any assumption of such power in a party to a pre-emption suit. The language of section 11, does not admit of its reading otherwise than it plainly reads on the basis that ultimately somebody might benefit from the deposit made in or the sum paid into Court. The legislature may have its own reasons for enacting such an imperative prohibition and it is not the function of the Court to delve into such reasons, find them not satisfactory, and to import the doctrine of want of grounds of public policy in the statutory provision, and then proceed to allow a party to a pre-emption suit the power to sanction attachment of the sum deposited in or paid into Court contrary to the express words of section 11. The doctrine of waiver does not apply to section 11.

There has been some argument that section 11 refers to a sum deposited in or paid into Court by 'a pre-emptor', and that as soon as a pre-emption suit is decided, the pre-emptor ceases to be 'a pre-emptor' within the meaning of section 11. This apparently is not correct, for the words 'a pre-emptor', in section 11 are descriptive of the person making the deposit in or paying the sum into Court at the time the deposit is made or the sum is paid. Nothing in the language of section 11 justifies that any such status has to be maintained by the pre-emptor even after the decision of the pre-emption suit for section 11 to remain operative. The reason is obvious. The prohibition is against the attachment of the sum deposited in or paid into Court whilst in the custody of the Court and the emphasis in the section is upon the custody of the Court and not upon the person who initially made the deposit or paid the sum into Court. So that this approach is not correct.

The answer to the first part of the question is that the protection of section 11 of Punjab Act I

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of 1913 is available against a deposit made by the pre-emptor in a pre-emption suit after the dismissal of the pre-emption suit when the amount is sought to be attached by the pre-emptor's decree-holder in execution of his decree against the pre-emptor. The answer to the second part of the question is that any agreement of the parties in the money suit by the decree-holder against the pre-emptor cannot give sanction for attachment of the deposit in view of section 11, as the parties cannot sanction what is expressly prohibited by the section.

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—I regret my inability to answer the question under reference as proposed by my brother, Mehar Singh, J.

The facts which are not in dispute are these. A sum of Rs, 2,000 was deposited on behalf of Tara Singh, who was serving a long term of imprisonment at that time, by his mother Kartar Kaur, in a suit brought for enforcing his pre-emptive right. The suit for pre-emption was eventually decreed on the condition that the balance of the purchase price would be paid on or before the 10th of March, 1960. As the balance price was not paid the pre-emption suit stood dismissed on 10th of March, 1960. In a different suit brought by the appellant Maharaj Kishan, for recovery of Rs. 2,500 as principal and Rs. 100, as interest against Tara Singh and his mother Kartar Kaur, a decree was passed on the 1st of July, 1960, and in execution proceedings, a compromise was effected that the sum of Rs. 2,000 which had been deposited as one-fifth of the pre-emption money would be attached and realised by the appellant. Subsequently, Tara Singh resiled from the agreement on the ground that the sum deposited by him under section 11 of the Punjab Pre-emption Act, 1913, could not be attached. The objection was sustained both by the executing Court

and in appeal by the learned District Judge of Amritsar. The appeal preferred to this Court came for hearing before a learned Single Judge at whose instance the matter was placed for disposal before a Division Bench which in turn has referred it to a Full Bench and the question for consideration is formulated as under :—

> "Whether protection of section 11 of Punjab Act I of 1913 is or is not available against a deposit made by the pre-emptor in a pre-emption suit after the dismissal of the pre-emption suit when the amount is sought to be attached by the decree-holder of the pre-emptor, in execution of the decree against the pre-emptor, and whether it makes any difference that the parties agreed in the money suit by the decree-holder against the pre-emptor that the amount of the deposit be attachable in execution of the decree?"

The first wing of the question under reference turns on the construction which is to be placed on section 11 of the Punjab Pre-emption Act, 1913, under which:—

> "No sum deposited in or paid into Court by a pre-emptor, under the provisions of this Act or of the Code of Civil Procedure (V of 1908) shall, while it is in the custody of the Court, be liable to attachment in execution of a decree, or order of a Civil, Criminal or Revenue Court, or of a Revenue Officer."

It is relevant to consider section 22 of the Act, under which the plaintiff is called upon to make a deposit,

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the liability for attachment of which is a subject-matter of section 11. Sub-section (1) of section 22 says that:—

> "In every suit for pre-emption the Court shall, at, or at any time before, the settlement of issues, require the plaintiff to deposit in Court such sum as does not, in the opinion of the Court, exceed one-fifth of the probable value of the land or property, or require the plaintiff to give security to the satisfaction of the Court for the payment, if required, of sum not exceeding such probable value within such time as the Court may fix in such order."

Sub-section (2) confers powers on an appellate Court of a similar nature. Sub-section (3) says that "every sum deposited or secured under sub-section (1) or (2), shall be available for the discharge of costs". Sub-section (4) lays down that if the deposit is not made or the security is not furnished the plaint or the appeal, as the case may be, shall be rejected or dismissed. Sub-section (5) is to this effect:—

> "(5) (a) If any sum so deposited is withdrawn by the plaintiff the suit or appeal shall be dismissed.
>
> (b) If any security so furnished for any cause becomes void or insufficient, the Court shall order the plaintiff to furnish fresh security or to increase the security, as the case may be, within a time to be fixed by the Court, and if the plaintiff fails to comply with such order, the suit or appeal shall be dismissed."

Sub-section (3) of section 22 makes it clear that the object of the plaintiff being called upon in a pre-emption suit to make the deposit or furnish security is for the discharge of costs and such a deposit or security shall always be available for this purpose. The plaintiff cannot proceed with his suit or appeal without this deposit being kept in a Court or the security to the satisfaction of the Court furnished. It is important to note also that clause (b) of sub-section (5) of section 22 empowers the Court to ensure that the security for the deposit is sufficient during the pendency of the suit or the appeal, as the case may be. If a plaintiff refuses to deposit additional security if directed by Court the suit or appeal is liable to be dismissed.

The true purpose of the deposit or the security has to be kept in view in examining the interdict which is placed on its attachment under section 11. "No sum deposited in or paid into Court by a pre-emptor" is liable to attachment in execution of a decree under section 11. This provision of law, in my view, has to be construed strictly being a rule in derogation of the recognised principle that a sum of money lying in deposit could be attached in execution of a decree against the person owning it. As stated in Sutherland Statutory Construction, Volume 3, at page 180, under paragraph 6206, "the Courts have commonly pronounced the rule that statutes in derogation of natural and common right are to be strictly interpreted, and must not be extended beyond their literal meaning". The words which, in my view, ought to be construed strictly in section 11 are "deposited in or paid into Court by a pre-empeor". The sum of Rs. 2,000 in the instant case was deposited in Court for Tara Singh on whose behalf had been brought a pre-emption suit. The question which I have to ask myself is whether after the dismissal of the suit it

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still remains a deposit in Court by a pre-emptor for it is only such a deposit by a pre-emptor which is exempted from attachment under section 11. As I see the matter, the deposit of Rs. 2,000 after the dismissal of the suit and indeed when no pre-emption proceeding in relation to it is pending has ceased to be a deposit by a pre-emptor for the purpose indicated in section 22 of the Act. Tara Singh no longer being a pre-emptor, the sum of Rs. 2,000 paid in Court for the object envisaged in section 22 cannot be treated as a deposit made by him as a pre-emptor. A legal connotation is attached to the word "pre-emptor" a deposit made by X in a pre-emption suit after all traces of the suit have disappeared though it continues to remain the deposit of X is not a deposit of a pre-emptor. In the last analysis, the word "pre-emptor" in section 11 must be related to the legal status of the depositor and the deposit by him in a pre-emption suit will not remain the deposit of a pre-emptor after the suit has been finally settled. As said in Maxwell on Interpretation of Statutes, eleventh (1962) edition, at page 3:—

> "The first and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise, in their ordinary meaning, . . ."

In the statute of pre-emption, the words "pre-emptor" and "deposit" have been given technical meanings and their scope and significance ought to be contained to attain the object of the legislation.

Is there any valid reason to keep alive the prohibition from attachability of a deposit made by a person in a pre-emption suit in execution of a decree even after the suit has been finally disposed of? To

say that the amount having been deposited by a pre-emptor once must always remain such does not answer the question. An unscrupulous person to save his liquidated assets from attachment by pursuing creditors might well file a frivolous suit for pre-emption and even after its dismissal choose to let the deposit remain in Court. This is an extreme instance no doubt but is sufficiently indicative of the restricted and specified scope which should be given to the concepts of "deposit" and "pre-emptor" in section 11. These terms have a technical significance in the Punjab Pre-emption Act and should not be expanded to assume a meaning which could not conceivably have been intended by the framers of the Punjab Pre-emption Act. It is of course true to say, as enunciated in Sutherland Statutory Construction, Volume 2, page 333, under paragraph 4701, that "where the intention of the legislature is so apparent from the face of a statute there can be no question as to the meaning, there is no room for construction". Does the language of section 11 present us with such a simple situation? If the deposit once made by a person as a pre-emptor is always to be so regarded it would clearly be repugnant to section 22 and the general purview of the Act. Moreover, the words "deposit" and "pre-emptor" should not be expanded beyond their literal meanings to create a situation which was obviously unintended by the legislature. A literal and strict construction of the words is, therefore, essential to harmonise it with the realities of the situation as also the recognised rules of construction. The containment of the terms "pre-emptor" and "deposit" as suggested would at once promote the intended object of the Punjab Pre-emption Act and prevent the anomalous and unintended situation of setting up a prepetual immunity from attachment of a deposit once made by a person as a pre-emptor even when the suit is no longer pending. In support of this conclusion the

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learned counsel for the appellant has invited our attention to *Abdus Salam and others* v. *Wilayat Ali Khan* (4), decision of a Division Bench of the Allahabad High Court (Sir John Edge, Chief Justice and Knox, J.). The plaintiff in a pre-emption suit in that case had deposited an amount in Court to satisfy the pre-emptive price and costs, but he appealed to the High Court against the amount decreed. A creditor of the plaintiff got this amount attached and it was observed by the Judges that it was extraordinary that a Judge was found to make such an order on the application. Eventually the suit of the plaintiff was decreed and when he asked for possession he was met with the objection that the amount had been withdrawn. This objection was repelled and in dismissing the appeal against this order the Judges observed that "money paid into Court in a suit cannot be taken out of Court by a creditor of the man who pays it in *so long as the suit is pending*.....Money paid into Court by a plaintiff in pre-emption to be paid over in a certain event to the defendant in the suit is in custody of the Court *until the result of the litigation is known*". The principle laid down in this decision that the money deposited by a pre-emptor is available for the purpose for which it had been put in Court till the result of the litigation has been accepted by a Bench of the Chief Court in *Santa Singh* v. *Ghasita and another* (6). This Bench of Reid and Robertson, JJ., held that "money deposited in a Court to be paid to a vendee under a pre-emption decree cannot be withdrawn by an attachment under a decree of a third party, and that a Court is not competent to pay it out to any one but the person entitled to it under the decree for pre-emption". What is laid down in section 11 of the Punjab Pre-emption Act, 1913, is nothing more than what has been stated to be the legal and equitable, position in *Abdus Salam and*

(6) 21 P.R. 1902.

others v. *Wilayat Ali Khan* (4), and *Santa Singh* v. *Ghasita and another* (6). It is also of interest that a Division Bench of the Lahore High Court (Lumsden and Abdul Raoof JJ.) in *Senwal Das* v. *Jaigo Mal and others* (7), observed that the object of enacting section 22(1) "is to guarantee vendees against frivolous proceedings on the part of possible pre-emptors". It was observed that the deposit yhich was required to be made under section 22(1) and what it has been made immune from attachment under section 11 is nothing but a "deposit in token of good faith and once the pre-emptor has obtained a decree, the need for a deposit no longer exists so far as the Trial Court is concerned". It was further held by this Bench that though "such deposits are available for the discharge of costs as mentioned in section 22(3), such satisfaction is not *the raison detre* of the deposit . . .". It may further be mentioned that Sir Shari Lal in his treatise on the Law of Pre-emption stated the object of enacting section 11 in a discussion of this provision of Law at page 362 of the third (1931) edition thus :—

> "The present section goes to the root of the evil and saves the pre-emptor from the risk of being deprived of his right merely by reason of there being a decree for debt outstanding against him. It is for this reason, and because when a pre-emption suit is launched, it is the interest of all that it should be decided quickly, that section 11 gives the privilege of security to deposits in pre-emption suits.

The money can be deposited in or paid into Court in two cases:—

(1) Under section 22 of the Act.

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(7) 79 I.C. 448.

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(2) Under order 20, rule 14, Civil Procedure Code, 1908, the pre-emptor has to pay into Court the purchase-money within a time specified in the decree.

Both these sums are exempt from attachment in execution of decree or order of Civil, Criminal or Revenue Court, or of a Revenue-Officer".

It would be useful to refer to a decision of the Lahore High Court in *Mohna Mal* v. *Tulsi Ram* (3), in as much as the Bench in that case of Broadway and Martineau JJ. considered the provisions of section 15 of the Redemption of Mortgages (Punjab Act No. 2 of 1913), in some respects *pari materia* with section 11 of the Punjab pre-emption Act. Section 15 of the Punjab Act 2 of 1913 states that "no sum deposited with the Collector by a petitioner under the provisions of this Act shall be attached by any Court or Revenue Officer". What happened in the Lahore case was that the decree-holder Mohna Mal in executing a decree against Tulsi Ram for a sum of Rs. 4,779.-2-0 attached the sum of Rs. 240 which had been deposited in he Court of the Revenue Assistant, under the provisions of Punjab Act 2 of 1913 by one Miran Bakhsh who desired to redeem the land which had been mortgaged by him to Tulsi Ram. The mortgage had been redeemed and Miran Bakhsh had taken possession of the mortgaged property. Tulsi Ram objected that the sum was unattachable under the provisions of section 15 of Act 2 of 1913. It was held by the Bench that the object of the deposit having been fulfilled the sum was no longer exempt from attachment thereafter. In the language of Broadway, J., "the provisions of section 15 are primarly for the protection of the person depositing the money" and

the deposit having been made under the provisions of the Act is exempt from attachment in execution of a decree against the depositor, but when the depositor had had his mortgage redeemed and the delivery of the property having been made over to him the money belonged to Tulsi Ram and there was no reason at all why it should remain unattachable. This authority of the Division Bench was not followed in a Single Bench decision of Rangi Lal, J., in *Solakhan Singh* v. *Sundar Singh* (1), on the ground that the words "while it is in the custody of the Court" did not find a place in section 15 of the Punjab Act 2 of 1913. The absence of these words, in my opinion, does not affect the integrity of the principle laid down in *Mohna Mal* v. *Tulsi Ram* (3). The money lying in custody of the Court is as much a deposit for a specific purpose as a sum deposited with the Collector under Punjab Act 2 of 1913. Chief Justice Bhandari in *Roop Chand* v. *Gulzari Lal etc.* (8), had occasion to consider this matter and as stated by him:—

> "A person can have no disposing power over property which is in the custody of the Court, for it is a general proposition of law that in the absence of a specific provision to the contrary, the property which is in '*custodia legis*' cannot be attached in the execution of a decree unless the specific purpose for which property is held has been fulfilled".

Thus, even a deposit in *custodia legis* can remain immune from attachment only till the specific purpose for which the deposit is made remains unfulfilled. The other Single Bench decision relied upon by the counsel for the respondents is *Ishar Singh* v. *Allah Rakha and another* (2), in which Jai Lal, J., holding that the language used in section 11 of the Punjab

(8) A.I.R. 1954 Punj. 257.

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Pre-emption Act, 1913, being clear and unambiguous the deposit made by a pre-emptor should be regarded immune from attachment in execution of a decree against the pre-emptor. It is true that even in that case the pre-emption suit filed by the pre-emptor had been decreed but the amount had not been withdrawn by the pre-emptor. The learned Judge was influenced by the language used in section 11 and did not allow his mind to be deviated by the object or the purpose of the immunity.

On the first portion of reference, I would, therefore, say that the protection under section 11 of the Punjab Pre-emption Act, 1913, is available to a deposit made by a pre-emptor so long as the money paid in Court retains the character of a deposit of a pre-emptor as envisaged by section 22 of the Act, and cannot be set up after the suit has been finally disposed of.

The question which is posed in the second part of the reference concerns the point of waiver. Is Tara Singh bound by the agreement made on his behalf that the sum of Rs. 2,000 which had been deposited as pre-emption money would be attached and realised by the appellants in execution proceedings ? The principle of law is succinctly stated in Maxwell on Interpretation of Statutes (1962 edition) at pages 375-376 under the title of 'Waiver':—

> "Another maxim which sanctions the non-observance of a statutory provision is that *cuilibet licet renuntiare juri pro se introducto.* Everyone has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy. Where in an Act there is no express prohibition against contracting

out of it, it is necessary to consider whether the Act is one which is intended to deal with private rights only, or whether it is an Act which is intended, as a matter of public policy, to have a more extensive operation."

According to the statement of law enunciated by Maxwell, Tara Singh or his legal representative would be able to contract out of section 11, if the immunity given to a pre-emption deposit does not constitute a public right set up in furtherance of a public policy. From an examination of the provisions of section 11 and 22, it is apparent that the deposit for pre-emption has to be available for "discharge of costs" and as a token of pre-emptor's earnestness to prosecute the suit. Principally, the deposit is made for the benefit and protection of the vendee or the other defendants who after the disposal of the suit cannot conceivably have any interest or concern in it or its exemption from attachment. On a dismissal of the pre-emption suit no purpose either public or private would be served by continuing the deposit in Court and making it immune from attachment. So long as the pre-emption suit is pending the sum can be withdrawn on the penalty of dismissal of the pending suit or appeal, as the case may be, and consequently its liability for attachment cannot be made relatable to the will of the person who has deposited it. On the termination of the pre-emption proceedings, however, the deposit is free to be dealt with by the person who made it as a pre-emptor and he can certainly make an agreement for its attachment after the disposal of the suit. In a Full Bench decision of the Calcutta High Court in *Ashutosh Sikdar* v. *Behari Lal Kirtania* (9), it was observed by Mookerjee, J., at page 74 thus:—

"When the object of the statute has determined, if the statutory provision is not based on

(9) I.L.R. 35 Cal. 61.

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Shamsher Bahadur, J.

grounds of public policy, and is intended only for the benefit of a particular person or class of persons, the conditions prescribed by the statute are not considered as indispensable and may be waived, because every one has a right to waive, and to agree to waive, the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, and which may be dispensed with without infringement of any public right or policy."

It is, of course true to say that no man can renounce a right of which his duty to the public and the claims of society forbid the renunciation. This principle came up for consideration by a Division Bench of Broomfield and Divatia, JJ., of the Bombay High Court in *The Post Master General, Bombay* v. *Gangaram Babaji Chavan* (10), Divatia, J., at page 422 put the matter thus:—

"The question then is whether it is open to a person to contract himself out of these provisions or to waive their benefit. It is no doubt a general rule that any one may renounce a law introduced for his own benefit. But that rule applies only to rights and benefits of a personal and private nature created under an agreement or granted by law. There is a clear distinction between a contractual or a statutory right created in favour of a person for his own benefit and a right which is created on the ground of public interest and policy. The rule of waiver cannot apply to a prohibition based on public policy."

(10) I.L.R. 1914 Bom. 415.

Broomfield, J., put this principle in a different form at page 424:—

> "If the privilege is purely personal, if the interests of third parties are not affected and in particular if there is no question of public interest or policy, no doubt the maxim is good law. But where a privilege is conferred for reasons of public policy, it is very well settled that it cannot be waived."

Farewell, J., in *Sohi Square Syndicate, Limited* v. *E. Pollard and Company* (11), has summarised the position as under:—

> "Where in an Act, there is no express prohibition against contracting out of it, it is necessary to consider whether the Act is one which is intended to deal with private rights only, or whether it is an Act which is intended, as a matter of public policy, to have a more extensive operation."

Looking at section 11 of the Punjab Pre-emption Act in its true context, there can be no manner of doubt that it was enacted for the benefits of a vendee and a pre-emptor and no public policy or interest is served or promoted by the immunity from attachment which extends to a pre-emptor's deposit. I am clearly of the view that the privilege or the benefit can certainly be waived by agreement of the parties, as has been done in the present case, and would answer the second portion of the reference accordingly.

GROVER, J.—To my mind, the first part of the question is academic as it does not arise on the facts of the case.

(11) (1940) 1 Ch. 638 at P. 644.

Maharaj Kishan, *v.* Tara Singh and others

Grover, J.

As regards the second part, I concur in the answer given by my brother Shamsher Bahadur, J., but I wish to add a few words. In *Gherulal Parakh* v. *Mahadeodas Maiya* (12), their Lordships have discussed at length the concept and content of "public policy". The following observations at page 795 are noteworthy:—

> "The doctrine of public policy may be summarized thus: Public policy or the policy of the law is an illusive concept: it has been described as 'untrustworthy guide', 'variable quality', 'uncertain one', unruly horse', etc; the primary duty of a Court of Law is to enforce a promise which the parties have made and to uphold the sanctity of contracts which form the basis of society, but in certain cases, the Court may relieve them of their duty on a rule founded on what is called the public policy; for want of better words Lord Atkin describes that something done contrary to public policy is a harmful thing, but the doctrine is extended not only to harmful cases but also to harmful tendencies; this doctrine of public policy is only a branch of common law, and, just like any other branch of common law, it is governed by precedents; the principles have been crystallized under different heads and though it is permissible for Courts to expound and apply them to different situations, it should only be invoked in clear and incontestable cases of harm to the public; though the heads are not closed and though theoretically it may be permissible to evolve a new head under exceptional circumstances of a

(12) A.I.R. 1959 S.C. 781.

changing world, it is advisable in the interest of stability of society not to make any attempt to discover new heads in these days."

It is difficult to see how in the light of the above observations the doctrine of public policy can be invoked with regard to the prohibition contained in section 11. I have no doubt that the protection conferred by the aforesaid section could be waived as indeed it was done in the present case.

BY THE COURT

On the first portion of the reference in question, whether the protection of section 11 of the Punjab Pre-emption Act is available to a deposit of a pre-emptor after the dismissal of the pre-emption suit the answer of Mehar Singh, J., is in the affirmative while that of Shamsher Bahadur, J., in the negative. In the opinion of Grover, J., the question does not arise on the facts of the case and is academic.

As regards the question whether the immunity could be waived by the pre-emptor, the answer of Mehar Singh, J. is that it cannot, while the opinion of Shamsher Bahadur, J., with which Grover, J., concurs, is that it can. The answer of the Full Bench, therefore, is that the immunity attaching to a deposit of a pre-emptor can be waived by agreement.

The case would go back to the Division Bench for disposal.

B.R.T.

CIVIL MISCELLANEOUS

Before Jindra Lal, J.

AMAR NATH AND OTHERS,—*Petitioners*

versus

THE LAND ACQUISITION COLLECTOR, KANGRA AND OTHERS,—*Respondents*

Civil Writ No. 1285 of 1962

1963

May. 24th

Land Acquisition Act (I of 1894)—Sections 11, 18 and 30—Award made with regard to the amount of compensation—Dispute arising as to its apportionment decided by