

concurrence and was finally put up for approval of the Governor, which was accorded on the 3rd of February, 1952. All this would show that the authorities had acted *bona fide* to correct a glaring error in the evaluation of the said villages and this was one of the material factors taken into consideration by the Managing Officer, for acting under the provisions of Rule 102 (d). The orders of the Managing Officer were upheld by the higher authorities and we are unable to detect any factual or legal infirmity in the action taken under section 19 read with Rule 102. The last contention of Mr. Wasu, therefore, also cannot succeed.

(10) In view of the foregoing discussion, we find no merit in these appeals which are dismissed but in the circumstances of all these cases we would make no order as to costs.

D. K. MAHAJAN, J.—I agree.

FULL BENCH

*Before Harbans Singh, C.J., Gurdev Singh and Prem Chand Jain, JJ.*

GARIB SINGH,—Appellant.

*versus*

HARNAM SINGH,—Respondent.

**Letters Patent Appeal No. 132 of 1971.**

July 15, 1971.

*Punjab Pre-emption Act (I of 1913)—Section 21-A—Sale of agricultural land or village immovable property—Vendee associating a stranger in the sale—Whether can resist the claim of pre-emption on his own qualifications or status—Such vendee acquiring the interest of the stranger co-vendee by gift or sale—Right to resist the pre-emption—Whether survives.*

*Held*, that where the sale is in favour of several persons, it is the status of the lowest of the vendees that has to be taken into account in determining whether the pre-emptor has a preferential right. A vendee associating with himself a stranger in the sale sinks to the level of the stranger and loses his own right to resist a suit for pre-emption. Hence the vendee, who associates with himself in the sale a stranger cannot resist the claim for pre-emption on the basis of his own qualifications or status. (Para 22).

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*Held*, that when a person who has right to first refusal does not exercise that right to take over the entire bargain, but on the other hand, chooses to associate with him a stranger or a person who has no right to pre-empt the property, he cannot be subsequently allowed to object to the sale, which has, with his acquiescence, violated the pre-emptive right. If once a person has waived his right to acquire the entire property, which is the subject-matter of the sale, by joining with him a stranger and thus forfeits his rights, he cannot revive that right by subsequently changing his mind and acquiring the interests of the purchaser. Hence a vendee who has joined with him a stranger in purchasing agricultural land or village immovable property cannot by acquiring the interest of the stranger co-vendee by gift or sale successfully resist a suit for pre-emption in view of the provisions of section 21-A of the Punjab Pre-emption Act, 1913. (Paras 1 & 31).

*Letters Patent Appeal under Clause X of the Letters Patent from the decree of the Court of the Hon'ble Mr. Justice D. S. Tewatia, dated the 2nd day of February, 1971, passed in RSA. 399/70 affirming that of Shri Dev Raj Saini, Ex-Officio Additional District Judge, Sangrur, dated the 11th March, 1970, which reversed that of Shri Paramjit Singh Ahluwalia, Sub-Judge, Class III, Sangrur, dated the 16th July, 1968, who dismissed the suit of the plaintiff and granting the plaintiff a decree for possession by pre-emption of the land in dispute against the defendants on payment of Rs. 4,000 and, further ordering that the plaintiff would deposit the pre-emption money in the lower Court on or by 11th May, 1970 failing which the suit would stand dismissed with costs of both the courts.*

S. P. GOYAL AND S. K. AGGARWAL, ADVOCATES, for the Appellants.

A. N. MITTAL AND S. M. ASHRI, ADVOCATES, for the Respondents.

**JUDGMENT**

GURDEV SINGH, J.—(1) The question for the consideration of this Full Bench may be stated thus :—

“Whether a vendee who has joined with him a stranger in purchasing agricultural land or immovable property can by acquiring the interest of the stranger co-vendee by gift or sale successfully resist a suit for pre-emption in view of the provisions of section 21-A of the Punjab Pre-emption Act, 1913?”

(2) It has arisen in the following manner :

Gharib Singh, Harnam Singh, Partap Singh and Kartar Singh, four sons of Kishna, jointly held 225 Kanals 9 Marlas of

agricultural land situate in village Kilampur. Kartar Singh having died, his son Harchand Singh sold his  $\frac{1}{4}$ th share to his uncle djed, his son Harchand Singh sold his share to his uncle Gharib Singh and his wife Shrimati Gurnam Kaur by a registered sale deed, dated 15th March, 1966 (Exhibit D.A.) for Rs. 4,000. On 15th March, 1967, Harnam Singh, a brother of Gharib Singh vendee, brought suit for pre-emption on the plea that he was a cosharer and also a near collateral of the vendor Harchand Singh. During the pendency of the suit, on 10th June, 1968, Shrimati Gurnam Kaur made a gift of her share of the land which she had jointly purchased with her husband to her co-vendee Gharib Singh. Taking advantage of this gift in his favour Gharib Singh resisted the suit for pre-emption *inter alia* on the plea that as a result of the gift in his favour, his wife Shrimati Gurnam Kaur (who was a stranger) had ceased to have any interest in the property and his right being equal to that of the pre-emptor, the suit must fail. This contention prevailed with the learned trial Judge, and after dealing with other issues arising in the case, he dismissed the suit, leaving the parties to bear their own costs. In appeal, the learned Additional District Judge, however, took a different view about the effect of the acquisition of his wife's interest by Gharib Singh and holding that this did not operate to restore him to his original position, he decreed the plaintiff's claim.

(3) In the second appeal preferred by Gharib Singh, the only point debated before a learned Single Judge of this Court related to the effect of this gift made in favour of Gharib Singh by his wife. The learned Single Judge relying on an unreported decision of S. R. Das, C.J., in *Tej Ram and others v. Puran*, which was confirmed in *Tej Ram and others v. Puran*, (2), held that acquisition by Garib Singh of the share of his wife under the gift amounted to improvement of his status and in view of the provisions of section 21-A of the Punjab Pre-emption Act, 1913, Garib Singh could

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(1) R.S.A. 380 of 1948, decided on 29th June, 1949.

(2) L.P.A. 76 of 1949, decided on 16th April, 1951.

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not benefit by the same. It is this judgment of the learned Single Judge that has given rise to this Letters Patent Appeal.

(4) In *Hayat Bakhsh v. Mansabdar Khan and others*, (3), a Division Bench (Addison and Din Mohammad, JJ.) after reiterating the long established rule that if a vendee having an equal right of pre-emption associates with himself in a joint purchase a stranger, or a person having no right to first refusal under the Act, he loses his right of resistance and cannot be allowed to retain even his own share of the purchase, however, held that he would be entitled to resist successfully the pre-emptor's suit if he removed the defect and clothed himself with right equal to that of the pre-emptor. In this connection, Din Mohammad, J., speaking for the Court observed thus :—

“We are in full accord with this view and hold therefore in respectful disagreement with 1933 Lah. 117 as well as 91 P.R. 1909 that the principle laid down in 1933 Lah. 481 represents correct view of the law on the point. It would look anomalous if a pre-emptor is permitted to divest a vendee of the property that he has legally acquired on the ground of a preferential right although at the time when the vendee is being so deprived the pre-emptor does not possess any such preference.”

(5) Again the same learned Judges ruled in *Jas Raj Junival v. Gokal Chand Jaini*, (4), that the vendee can defeat a pre-emptor by parting with the property in favour of a superior pre-emptor even during the pendency of the pre-emption suit, but in order to avoid the applicability of the doctrine of *lis pendens*, such transfer must take place within the period of limitation, otherwise the transfer will be bad in law and not sufficient to defeat the claim of the pre-emptor.

(6) Earlier in *Bhagwana and others v. Shadi and others*, (5), it was held by another Division Bench (Addison and Beckett, JJ.) that if a purchaser having an equal right of pre-emption associates with

(3) A.I.R. 1935 Lah. 529.

(4) A.I.R. 1935 Lah. 808.

(5) A.I.R. 1934 Lah. 878.

himself in the purchase a person with right inferior to that of the pre-emptor, he is not entitled to resist the claim of such pre-emptor to enforce his rights even as to his share of the purchase. Reliance in this connection was placed on *Achhru v. Labhu* (6), and *Tota Ram v. Kundan*, (7), which are based on the earlier Division Bench judgment in *Kesar Singh v. Punjab Singh v.* (8), with the following observations :—

“It was held that in the case of a sale to various persons, the contract of sale as regards the vendor was one and indivisible, the specification of the share in the sale-deed being merely an arrangement among the purchasers *inter se*, which did not affect the vendor, who had contracted to take the purchase money for the whole land, and could not have been compelled to sell to one or other of the vendors his specified share on payment of a proportionate share of the purchase money. With great respect this seems to be the correct view. There is only one sale transaction which is indivisible and the plaintiffs are therefore entitled to pre-empt.”

(7) The matter again came up for consideration in two separate cases which were decided by a Full Bench constituted by Tek Chand, Din Mohammad and Beckett, JJ. In *Thakur Madho Singh and another v. Lt. James R. R. Skinner and another*, (9), it was held that a resale by the vendee in favour of a person possessing equal rights with the pre-emptor, leading to the dismissal of the pre-emptor's suit is valid. In this connection, it was observed that a vendee can defeat the right of the pre-emptor by improving his status at any time before the passing of the decree in the pre-emption suit by the trial Court, as the rights of parties are adjudicated upon by the trial Court alone and the function of the Court of appeal is only to see what was the decree which the Court of first instance should have passed. It was further ruled in that case that improvement by the vendee in his status can be effected even after the expiry of one

(6) 48 P.R. 1970.

(7) A.I.R. 1928 Lah. 784.

(8) 16 P.R. 1896.

(9) I.L.R. (1942) Lah. 155=A.I.R. 1941 Lah. 433.

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year from the date of the original transaction of sale right up to the adjudication of the suit.

(8) In the other case reported as *Ali Mohammad and another v. Mohammad Din and others* (10), decided on the same day, it was held that where a vendee having an equal right of pre-emption associates with himself in a joint purchase as stranger, he loses his right of pre-emption and cannot be allowed to retain even his own share of the purchase, but if the vendee during the pendency of the suit removes the defect by purchasing the stranger's share at any stage before the final adjudication of the case, the pre-emptor cannot succeed irrespective of the fact that the subsequent acquisition takes place after the limitation had expired.

(9) This is a case that is directly in point. Though Bekett J. agreed with the other two learned Judges in dismissing the suit, he, however, recorded the following note :

"As regards the question whether a stranger can acquire a right of pre-emption after the date of sale, I have expressed my doubts in my judgment as a member of the Full Bench in (*Madho Singh v. James R. R. Skinner*, (9)), but the question here is not exactly the same. The vendee is not here acquiring any right of pre-emption to be matched against the right of the pre-emptor. He possesses the right in the first instance, and once the strangers are removed, the basis of the right of pre-emption disappears. This is in accordance with the reasons given by the Mahomedan authorities for deciding points of similar kind."

(10) The effect of transfer by a vendee of the property sought to be pre-empted to a person having superior right of pre-emption during the pendency of the suit for pre-emption and the applicability of doctrine of *lis pendens* then came up for consideration before a Full Bench of the Lahore Court in *Mst. Sant Kaur v. Teja Singh and others* (11). Din Mohammad, J., in his order of reference to the Full Bench, observed as follows:—

"The questions involved in both these are identical, viz., (1) Whether a sale by a vendee in favour of a superior pre-emptor during the pendency of a suit for pre-emption but

(10) A.I.R. 1941 Lah. 444 (F.B.).

(11) A.I.R. 1946 Lah. 142.

after the expiry of the period of limitation entitles the subsequent transferee to be impleaded as a party to the suit so as to be able to defeat the right of pre-emption claimed by the plaintiff? (2) Whether the fact that the subsequent transferee has, as a result of the sale in his favour, obtained possession of the property in suit is, in any way, material to the consideration of this matter? In *Jas Raj Juniwal v. Gokal Chand Jaini* (4), as a member of a Bench of this Court, I was responsible for making certain observation directly touching the principal point at issue, but in a later case, reported as *Ali Mohd, v. Mohd. Din* (12), which came before a Full Bench, it was argued that those observations required further consideration. The Full Bench, however, refrained from expressing any opinion thereon as it was thought that the question did not directly arise in the case and that any remarks made by the Bench would be mere *obitor dicta*. The questions are, important and generally arise in pre-emption suits. I accordingly forward these cases to the Honourable the Chief Justice with a recommendation that the two questions set forth above may be decided by a Full Bench."

(11) On a review of the various authorities, the Full Bench (Din Mohammad, Teja Singh and Achhru Ram JJ.) answering the questions formulated above by the referring Judge in these words:-

"Where the subsequent vendee has still the means of coercing, by means of legal action, the original vendee into surrendering the bargain in his favour, a surrender as a result of a private treaty, and out of Court, in recognition of the right to compel such surrender by means of a suit cannot properly be regarded as a voluntary transfer so as to attract the application of the rule of *lis pendens*. The correct way to look at the matter, in a case of this kind is to regard the subsequent transferee as having simply been substituted for the vendee in the original bargain of sale. He can defend the suit on all the pleas which he could have taken had the sale been initially in his own favour.

(12) I.L.R. 1942 Lah. 190.

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However, where the subsequent transferee has lost the means of making use of the coercive machinery of the law to compel the vendee to surrender the original bargain to him, a re-transfer of the property in the former's favour cannot be looked upon as anything more than a voluntary transfer in the former's favour or such title as he had himself acquired under the original sale. Such transfer has not the effect of substituting the subsequent transferee in place of the vendee in the original bargain. Such a transferee takes the property only subject to the result of the suit. Even if he is impleaded as a defendant in such suit, he cannot be regarded as anything other than a representative-in-interest of the original vendee, having no right to defend the suit except on the pleas that were open to such vendee himself. He not being entitled to be regarded as a party to the original sale, which is being pre-empted, it is not against him but against the original vendee through and under whom he claims, that the pre-emptor has, in order to succeed, to prove a superior pre-emptive right. The comparison, even at the date of the decree, has to be between the status of the plaintiff and that of the original vendee and not between that of the plaintiff and the subsequent transferee. It is thus obvious that it can make no real difference to the position of such transferee if he is impleaded as a party to the pre-emption suit pending which the property in suit has been transferred to him. Even on being so impleaded, he will not have any right to defeat the suit by means of his own qualifications, which gave him an equal or better right of pre-emption qua the original sale."

(12) The concluding portion of these observations is important for the decision of the controversy that has arisen before us. If in accordance with the rule laid down by their Lordships of this Full Bench the purchaser from the vendee during the pendency of the suit is to confine his defence only to the pleas open to the original vendee, in a case like the one with which we are dealing, a vendee by purchasing the interest of his co-vendee who is a stranger will not be entitled to defend the suit on the basis of his own qualification. Even if he had a right equal or superior to that of the plaintiff



as an original vendee, he cannot get rid of the fact that by associating with him a stranger in the sale he had sunk to the latter's level and lost that right, since it is well-settled that if a sale is made in favour of more than one person then for the purpose of determining whether the pre-emptor has a right superior to the vendee, it is the status of the lowest vendee that has to be taken into account.

(13) In *Imam-ud-Din and another v. Nur Khan and another* (13), it has been held that in a suit for pre-emption, where it appeared that one purchaser having a right of pre-emption superior to the plaintiff's had joined in the purchase with a person who had no such right, the said purchaser could not be allowed to rely on his own right so as to defeat the plaintiff's claim, but being a party to a transaction by which the plaintiff's right of pre-emption was infringed was entitled to no superior position, when that right was asserted, to that of the other party who had joined with him in the purchase. The following observations made by Barkley, J., delivering the judgment of the Division Bench are pertinent:—

“He has joined in the purchase with a person who has no right of pre-emption, and to allow him to rely on his own right to defeat the plaintiffs' claim would be to deprive the plaintiffs of their right of pre-emption against Haku, the joint purchaser. Imam-ul-Din is a party to the transaction by which the plaintiffs' right of pre-emption is infringed, and is entitled to no superior position, when that right is asserted, to that of Haku, who is joined with him in the purchase. It is suggested that he might buy out Haku but he has no claim to be allowed to do so, and if he did so, this would not make him the sole purchaser in regard to the sale which has given rise to the plaintiffs' right to purchase. The same point has been decided by the High Court, North Western Provinces, in *Ganesh Lal v. Zaraat Ali* (14), and by the Sadr Dewani Adalat in *Sheodial Ram v. Bhairu Ram* (15), while the converse of the present case has been decided in *Bhawani Prasad v. Damru* (16), on the same principle.”

(13) 10 P.R. 1884.

(14) 2 N.W. P.H.C.R. 373.

(15) S.D.A. Rep. N.W.P. for 1860 p. 53:

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(14) While recording the judgment of the Division Bench in *Bhawani Prasad v. Damru* (16), Mahmood, J., considering the effect of a vendee associating with him a stranger, said:

“The rule of law by which a person, entitled to pre-emption, forfeits his right is based upon the principles of equitable acquiescence which forms one of the most important elements of restrictions imposed upon the vindictive or capricious exercise of the right of pre-emption. Those restrictions appertain to the very essence and nature of the right-restrictions which, if ignored, would defeat the policy on which the right of pre-emption is based. A person who, whilst possessing the pre-emption right, takes part in transacting the sale of a stranger, or who, in purchasing property himself, joins a stranger in such purchase, cannot, on the one hand, subsequently object to the sale which has with his acquiescence violated the pre-emption right; nor, on the other hand, can he resist the claim of other pre-emptors who, in suing for pre-emption, vindicate the policy of the right. *The rule is, that a person cannot claim a right which he has himself violated, nor can he be allowed to complain of an injury in which he has himself acquiesced.*”

(15) A Full Bench of our own Court had the occasion to consider the effect of transfer by a vendee in favour of a person having pre-emptive right superior to the plaintiffs' in *Wazir Ali Khan v. Zahir Ahmad Khan and others* (17). Following the decision in *Madho Singh and another v. Lt. James R. R. Skinner and others* (9), the learned Judges, (Ram Lall, C.J., Bhandari and Achhru Ram, JJ.), held that where the transfer takes place before the institution of the suit, the transferee can resist the suit on the strength of his own pre-emptive right regardless altogether of the consideration whether the transfer in his favour was made in recognition of his superior pre-emptive right, or could otherwise be regarded as having been made in recognition of such right, and in such a case it would be immaterial whether the transfer took the form of a sale, a gift or an exchange. So long as the transferee can be shown to have acquired the full title of the vendee under the sale sought to be pre-empted, he can resist the suit on all pleas which would have been open to him

(16) I.L.R. 5 All. 197.

(17) A.I.R. 1949 E.P. 193.

had the sale in the first instance been made in his favour. In the case of re-transfer taking place after the institution of the suit, their Lordships ruled that the transferee can plead his own equal or superior pre-emptive right in bar of the suit only if the transfer in his favour can be held to have been made in recognition of such right. In such a case, the transfer in order to clothe the transferee with a right to resist the plaintiff's suit on the strength of his own qualification must have taken the form of sale and must have been made at a time when his right to enforce his pre-emptive right by means of an action was still subsisting. It was taken as settled law that unless a transfer *pendente lite* can be held to be a transfer in recognition of a subsisting pre-emptive right, the rule of *lis pendens* applies, and the transferee takes the property subject to the result of the suit during the pendency whereof it took place. In that case, reliance was placed upon the Full Bench decisions of the Lahore High Court in *Moolchand v. Ganga Jal* (18), and *Mst. Sant Kaur v. Teja Singh* (11).

(16) The rule of *lis pendens* as applicable to pre-emption suits in Punjab has been dealt with by their Lordships of the Supreme Court in *Bishan Singh and others v. Khazan Singh and another* (19). The nature of the right of pre-emption as set out by Mahmood, J., in *Gobind Dayal v. Inayatullah* (20), and the material incidents of such right as stated by Plowden, J., in *Dhani Nath v. Budhu* (21), were approved by their Lordships of the Supreme Court, and it was recognized that a pre-emptor has two rights: (1) inherent or primary right, i.e., a right to the offer of a thing about to be sold, and (2) secondary or remedial right to follow the thing sold. With regard to the latter right, Plowden, J., had said:—

“The secondary right is to follow the thing sold, when sold without the proper offer to the pre-emptor, and to acquire it, if he thinks fit, in spite of the sale made in disregard of his preferential right.”

K. Subba Rao, J., (as he then was), who delivered the judgment of the Supreme Court summed up the legal position in these words:—

“The vendee may defeat the right by selling the property to a rival pre-emptor with preferential or equal right. To

(18) A.I.R. 1930 Lah. 356 (F.B.).

(19) A.I.R. 1958 S.C. 838.

(20) I.L.R. All. 775 (F.B.).

(21) 136 P.R. 1894 at p. 11.

summarize: (1) The right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to be sold. This right is called the primary or inherent right. (2) The pre-emptor has a secondary right or a remedial right to follow the thing sold. (3) It is a right of substitution but not of re-purchase, i.e., the pre-emptor takes the entire bargain and steps into the shoes of the original vendee. (4) It is a right to acquire the whole of the property sold and not a share of the property sold. (5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or the person substituted in his place. (6) The right being a very weak right, it can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place."

(17) After noticing the Full Bench judgments in *Sant Kaur v. Teja Singh* (11), and *Wazir Ali v. Zahir Ahmad, etc.* (17), and the decision of the Allahabad High Court in *Kundan Lal v. Amar Singh* (22) K. Suba Rao J. proceeded on to say :—

"The settled law in the Punjab may be summarized thus :

The doctrine of *lis pendens* applies only to a transfer *pendente lite*, but it cannot affect a pre-existing right. If the sale is a transfer in recognition of a pre-existing and subsisting right, it would not be affected by the doctrine as the said transfer did not create new right *pendente lite*, but if the pre-existing right became unenforceable by reason of the fact of limitation or otherwise, the transfer, though ostensibly made in recognition of such a right in fact created only a new right *pendente lite*."

(18) In none of these decisions section 21-A of the Punjab Pre-emption Act 1913 came up for consideration. This section was introduced by the Punjab Act 1 of 1944, and it is on its interpretation that the fate of the question arising for our consideration depends. As has been observed earlier, it had been ruled by the Lahore High Court in the two Full Bench cases, *Thakur Madho Singh and another v. Lt. James R. R. Skinner and another* (9) and *Ali Mohammad and another*

v. *Mohammad Din and others* (10), that if the vendee during the pendency of the suit removes the defect by purchasing the stranger's share at any stage before the final adjudication of the case, the pre-emptor cannot succeed irrespective of the fact that the subsequent acquisition takes place after the limitation had expired. It was to nullify the effect of these two Full Bench decisions that the legislature amended the Punjab Pre-emption Act 1913 by introducing section 21-A, which provides :—

“Any improvement, otherwise than through inheritance succession, made in the status of a vendee-defendant after the institution of a suit for pre-emption shall not affect the right of pre-emptor-plaintiff in such suit.”

(19) As will be seen from the decisions referred to above, prior to the introduction of section 21-A there was an unhealthy race going on the part of vendee to defeat the right of pre-emption of making improvement in his position by voluntary and volitional efforts upto the date of getting decree. By introducing this new provision the scope of the race to improve his status on the part of the vendee was circumscribed upto the date of institution of the suit and not thereafter except where the improvement in the status of the vendee is not a result of his effort or volition but because of inheritance or succession. This section was added to counter-act the view taken in I.L.R. 1942 Lah. 155 and I.L.R. 1942 Lah. 190 and 473 that the vendee was entitled to defeat the pre-emptor's right by improving his status at any time up to the adjudication of the suit by the trial Court. This is quite apparent from the statement of objects and reasons of the amending Act 1 of 1944, wherein it is stated :—

Section 21-A is being added to the Punjab Pre-emption Act to restore the *status quo* in the case of pre-emption suits, wherein the vendee seeks to improve his position by means of a voluntary acquisition of right of property made, after the institution of the suit.”

(20) So far as this Court is concerned, this provision, section 21-A of the Punjab Pre-emption Act, came up for consideration in *Tehoo Ram and others v. Da'ip Singh and another* (23) where Harnam Singh J., relying upon an earlier decision of this Court in *Tej Ram v. Puran*

*Chand* (2), ruled that the improvement made in the status of some of the vendees after the institution of the suit for pre-emption cannot affect the right of the pre-emptors in that suit. In that case one of the six vendees was a stranger, and the question arose whether the other vendees who had the right of pre-emption equal to that of the pre-emptor could be permitted to improve their status by the sale made in their favour by their co-vendee during the pendency of the suit. In recording the above opinion, Harnam Singh J. relied upon section 21-A of the Punjab Pre-emption Act. A contrary view has, however, been taken by Harbans Singh, J. (my Lord the Chief Justice as he then was) recently in *Hari Singh v. Damodar and others* (24), and it was ruled that a tenant, who was losing his right of resistance to a suit for pre-emption as provided under section 17-A of the Punjab Security of Land Tenures Act simply because of the existence of a stranger, can be restored to his right if he gets rid of the stranger before the passing of a final decree in the pre-emption suit instituted against the vendees. The decisions of the Lahore High Court in *Ali Mohd's case* (10), *Hayat Baksh's case* (3), *Jas Raj Juniwal's case* (4) and *Thakur Madho Singh's case* (9), and the Supreme Court decision in *Bishan Singh v. Khazan Singh* (19) were considered, and in support of the view taken by his Lordship it was said :

“The learned counsel for the respondent then urged that section 21-A of the Punjab Pre-emption Act specifically prohibits any improvement of the status of the vendee during the pendency of the suit. The word ‘status’ may have a different meaning in different contexts, but I feel that in the context of this case it has the meaning of the ‘position occupied by the vendee’. In the present case, it must refer to his position as a tenant. No improvement has taken place in the status of the tenant because he was a tenant, to begin with, and he continued to be a tenant thereafter. He has only been able to remove the impediment in his way for claiming the protection given to him as such.”

(21) In that case the tenant who had originally purchased the property along with a stranger later, during the pendency of the suit, got rid of the stranger by purchasing his interest. Unfortunately, neither the decision of Harnam Singh, J. in *Tehoo Ram and others v. Dalip Singh and another*, (23) (*supra*) nor the Division Bench

(24) 1966 P.L.R. 45.

judgment in *Tej Ram v. Puran Chand*, (2), was brought to his Lordship's notice. By the latter judgment (*Tej Ram's case* (2)), the Letters Patent Bench had affirmed the decision of S. R. Das, C.J., in *Tej Ram and others v. Puran* (1).

(22) It cannot be disputed that because of the amendment of the Punjab Pre-emption Act by introduction of section 21-A, the authorities in which it had been ruled that a vendee by voluntary acquisition can improve his position even after the institution of the suit are no longer good law. Section 21-A specifically prohibits such voluntary improvements after the suit, and, as has been noticed earlier, it was enacted to nullify the effect of those authorities. This proposition has not been contested before us. All that has been urged on behalf of the pre-emptor is that the case before us does not come within the mischief of section 21-A as by purchasing the interests of his wife, who had no right to resist the plaintiff's claim and was a stranger, Gharib Singh had not in any way improved his status. Thus, the answer to the question, which we are considering, would depend upon the interpretation of the word "improvement" as used in section 21-A of the Punjab Pre-emption Act. The argument, in brief, raised on behalf of the Pre-emptor is that Gharib Singh was a co-sharer at the time of the sale and related to the vendor being his uncle, and though by purchasing the interest of his wife in the suit property he had no doubt acquired the right of ownership to the entire property, yet he had not in any way improved his status either as a co-sharer or as a relation of the vendor. In such circumstances, it is argued, the re-sale in his favour by his wife has not resulted in improvement of his status. In considering what is meant by 'status' my Lord the Chief Justice in *Hari Singh's case* (24) has observed that it means the same thing as 'position'. It is true that by purchasing his wife's interest Gharib Singh had in no way improved upon his status as a co-sharer or as a relation of the vendor, but his position vis-a-vis the pre-emptor has been materially altered to his advantage. In accordance with the principle, which is now well-settled by recent decisions and catena of authority, a vendee who associates with himself in the sale a stranger cannot resist the claim for pre-emption on the basis of his own qualifications or status. It is settled law that where the sale is in favour of several persons, it is the status of the lowest of the vendees that has to be taken into account in determining whether the pre-emptor has a preferential right. Had not Gharib Singh obtained the share of his wife by gift in his favour, surely he could not have resisted the pre-emptor's claim. Now by purchasing his

wife's share he claims to have got rid of that disability and sets up his own status as co-sharer and relationship with the vendor as defence to defeat the pre-emptor's claim. In my opinion, there can be no doubt that by getting rid of then stranger he has attempted to improve his position.

(23) We arrive at the same conclusion if we consider the matter from another angle. It is well-settled that where a vendee associates a stranger with him, he sinks to the level of the stranger. In fact, in some cases it has been ruled that the result of such association of a stranger is that the vendee forfeits or loses his own right to resist the suit. As by acquiring the stranger's share Gharib Singh claims to have got back the right to resist the plaintiff's suit on the strength of his own qualifications, it is obvious that his claim is nothing but that he had improved his status.

(24) It has been argued on behalf of Gharib Singh, that it is not an improvement and by acquiring his wife's share he merely got rid of the stranger. As a facile mataphor it is urged that by associating a stranger in the sale, he had put a sinking stone around his neck, but on getting rid of the stranger he had succeeded in casting off that dead weight and had thus come on the surface to swim on his own strength. To appreciate the contention it becomes necessary to consider what is the effect of a vendee joining a stranger in a sale.

(25) The exact question that remains to be answered is whether by associating a stranger in the purchase Gharib Singh had lost or forfeited his right of pre-emption or whether it had resulted merely in suspension of his right or rendering it dormant only for the time that he remained associated with the stranger, and as soon as he got rid of the stranger, his right to resist revived.

(26) There is no specific provision in the Punjab Pre-emption Act that lays down the consequence of a vendee, having qualifications to resist a suit of pre-emption, associating with himself a stranger in the sale and it is to the various judicial decisions that we must turn. This question appears to have arisen as far back as the year 1860 before the High Court of the North West Frontier Provinces in *Ganesh Lal v. Zaraat Ali* (14), and before the Sadar Dewani Adalat in *Sheodial Ram v. Bhairu Ram* (15), on which reliance has been placed in the Punjab Chief Court judgment in *Imam-Ud-Din and*



*another v. Nur Khan and another* (13), (Supra), in support of the dictum that a purchaser having a right of pre-emption superior to the plaintiff's cannot be allowed to rely on his own right so as to defeat the plaintiff's claim, if in the sale he has associated a stranger with him.

(27) In *Fatteh Chand v. Nihal Singh and others* (25), Rattigan, J. (Brandreth, J. concurring), held that if a pre-emptor suffered another person to purchase, and is content to accept a derivative title from him with respect to a portion only of the premises sold, being unwilling to buy the rest, he must be held to abide the consequence of losing even that portion, if another person, having a superior right to that of his vendor, claims to assert his right to take over the original bargain as a whole; and the sub-purchaser is estopped from asserting the right he once waived of acquiring the property sold against another person whose claim to pre-emption, though inferior to his own, is still superior to that of the first purchaser.

(28) Again in *Rukan Din v. Ilam Din and others* (26), the same learned Judge, with whom Harris, J. agreed, ruled that a purchaser, who joins with himself a person, who has no right of pre-emption, places himself in no better position than that held by the stranger.

(29) In *Murad v. Mine Khan and others* (27), a Division Bench of the Punjab Chief Court (Rivaz and Chatterji JJ.) held that a sale in which a stranger is joined becomes "bad in its entirety" against the pre-emptor. Rivaz, J., who delivered the judgment of the Court, observed as follows:

"It seems to us clear on the authority of Civil Judgment in *Imam-ud-din's case* (13), which has been frequently followed in this Court, that plaintiff so far is entitled to succeed, as those vendees who have equal rights with plaintiff cannot be allowed to rely on their rights to defeat his claim, after associating with themselves as joint purchasers persons against whom plaintiff has undoubtedly superior rights. The plaintiff's right of pre-emption is superior under the

(25) 106 P.R. 1880.

(26) 100 P.R. 1900.

(27) 94 P.R. 1895.

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Punjab Laws Act to that of the vendees collectively, as that law recognizes no equal or superior right in a pre-emptor joined with a stranger on a joint sale. The sale is moreover bad in its entirety against plaintiff, this not being a case in which several parcels have been sold to distinct vendees in one deed, the present sale being of an undivided share in which the only specification is as to the proportions in which the several vendees shall be regarded as joint owners."

Reference has already been made to *Hayat Bakhsh v. Mansabdar Khan and others* (3), wherein relying upon *Bhagwana v. Shadi* (5), it has been held that if a vendee having an equal right of pre-emption associates with himself in a joint purchase a stranger or a person having no right to the first refusal under the Act, he loses his right of resistance and cannot be allowed to retain even his own share of the purchase.

(30) Though in some of the decisions it has been observed that by joining a stranger, a purchaser, who has a right to first refusal, sinks to the level of the stranger, in most of the judicial decisions it has been ruled that a person having a right to resist a pre-emption claim not merely sinks to the level of a stranger, but forfeits his rights. It would suffice in this connection to refer to *Bhawani Prasad v. Damru* (16), and *Gupteshwar Ram and others v. Rati Krishna Ram and another* (28).

(31) The argument that by getting rid of the stranger and acquiring his interests a vendee regains the freedom to resist the plaintiff's claim on his own qualifications and original status proceeds on the observations in some of the judgments that by joining a stranger he sinks to the level of the stranger. The consensus of judicial opinion, however, is that he not merely sinks to the level of the stranger for so long as the stranger remains associated with him in the bargain, but he forfeits his right if he purchases the property along with the stranger and the sale is indivisible. Speaking with respect, this seems to be the correct position. The reason is obvious. When a person who has right to first refusal does not exercise that right to take over the entire bargain, but, on the other hand, chooses to associate with him a stranger or a person, who has

(28) I.L.R. (1912) All. 542.

no right to pre-empt the property, he cannot be subsequently allowed to object to the sale, which has, with his acquiescence, violated the pre-emptive right.

(32) If once a person has waived his right to acquire the entire property, which is the subject-matter of the sale, by joining with him a stranger and he thus forfeits his rights, he cannot revive that right by subsequently changing his mind and acquiring the interests of the purchaser. The following observation of Plowden, J., in *Nabbi Bakhsh v. Kaka Singh* (29), are pertinent :—

“When a pre-emptor has once waived his right to accept or insist upon an offer of sale, he cannot, in my opinion, afterwards come forward and re-assert his right against another person who has claimed pre-emption in the same sale—His right is to have an offer made to him and to have the option of accepting or rejecting that offer within a reasonable time. He cannot say: I waive my right in favour of a particular person, and reserve it as against all others. He must make his election, and accept or reject the offer absolutely and without reservation once for all; and if he does not accept the offer, or if, as in the present case, he places himself by dispensing with an offer or acquiescing in a sale, in such a position that he cannot enforce his right against the purchaser under the original sale, he cannot assert it against one, who, by legal proceedings, gets the ultimate benefit of the same sale.—He waives his preferential right and acquiesces in a transfer to a stranger,—thus acting as a traitor to those common interests which the right of pre-emption is designed to protect; and when a member of the village has been at the trouble and expense of preventing the intrusion of a stranger, he seeks to deprive him, at the foiled intruder's instigation, of the property he has recovered and preserved to the community. It is satisfactory to find the law does not, as I understand it, sanction or assist an endeavour of this kind.”

(33) The answer to the question arising for our consideration must be in the negative for two reasons:

- (1) That the acquisition of the interests of the stranger co-vendee by Garib Singh amounts to an improvement of his status; and

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- (2) that by associating a stranger with him in the joint sale, Garib Singh, not merely sank to the level of the stranger but had forfeited his right to resist the plaintiff's claim and the same could not be revived by repurchasing the vendee's interests in the sale.

(34) Despite the great respect in which I hold my Lord the Chief Justice, I regret my inability to concur in the opinion expressed by him in *Hari Singh v. Damodar and others* (24), that by removing the defect in his right of resistance which had crept in by joining with him a stranger, the vendee was restored to his original position with all the corresponding privileges and thus he could defeat pre-emptor's claim. This view proceeds on the assumption that by getting rid of the stranger by purchasing his interest, the vendee in no way improves his status. I have already dealt with this matter. In my opinion, when Garib Singh acquired the interests of his wife, who was a stranger in the sense that she had not even semblance of the nyle to resist the preemptors claim, he attempted to improve his position so as to exclude the stranger, and an improvement is clearly hit by section 21-A of the Pre-emption Act, being voluntary and not the result of succession or inheritance. It may be noticed in passing that though the decision in *Hari Singh's* case (24), was reversed in appeal *Damodar etc. v. Hari Singh* (30), by the Letters Patent Bench, the reversal was on a different point, and their Lordships did not deal with the effect of section 21-A of the Punjab Pre-emption Act.

(35) There are, however, two earlier decisions of this Court, which are directly in point. Reference has already been made to one of them, namely, *Tehoo Ram and others v. Dalip Singh and another* (23), wherein Harnam Singh, J. had held that re-purchase of the interests of a stranger-vendee constitutes an improvement and thus is contrary to section 21-A and, as such, not permissible under section 21-A of the Punjab Pre-emption Act. Relying upon the Full Bench decision in *Ghu'am Qadir v. Ditta* (31), Harnam Singh, J., further held that it would make no difference if the shares of the various vendees, if they happen to be more than one, were specified as long as the sale was for a consolidated price.

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(30) 1970 P.L.R. 371.

(31) A.I.R. 1945 Lah. 184.

(36) The other decision is an unreported judgment in *Tej Ram and others v. Puran* (1), decided by S. R. Das, C. J. (later of the Supreme Court). This is the decision on which the learned Single Judge in the case before us has placed reliance. The learned Chief Justice reiterated the well-settled rule that a vendee, who has equal or superior right of pre-emption to that of the plaintiff, and joins with him a stranger as co-vendee, he loses his right, and held that by repurchasing the interest of the stranger he cannot defeat the pre-emptor's claim in view of the provisions of section 21 of the Punjab Pre-emption Act. In this connection, his Lordship observed:—

“It is abundantly clear on the authorities that by joining a stranger with himself a person with an equal or superior right of pre-emption loses his right. Therefore, a vendee who has a right of pre-emption equal or superior to that of the plaintiff and who, if he was the only vendee, could have defeated the plaintiff, loses that right if he joins with him a stranger as co-vendee. In other words, a vendee with an equal or superior right of pre-emption conjointly with a stranger vendee is reduced to the status of a stranger, at any rate for the purposes of pre-emption. Therefore, by buying off the stranger the vendee removes the blot or defect which brought about his loss of status for the purposes of pre-emption and on such removal of the blot or defect he is re-instated in his former status. Whether one regards the association of the vendee with a stranger as destroying the vendee's status for the purposes of pre-emption or as only imposing a disqualification or defect on his status which continues to subsist in a dormant state, the fact remains that as long as this association continues the vendee has no right of pre-emption which can defeat the plaintiff. Likewise whether the buying off of the stranger vendee be regarded as the acquisition of a fresh status by the vendee for the purposes of pre-emption or only as the removal of a defect which rejuvenates the dormant status into an active life for the purposes of pre-emption, the fact remains that immediately after the removal of the stranger the vendee becomes entitled to claim the right of pre-emption. In any case, therefore, there is surely an improvement in the position of the vendee, for whereas as long as his association with

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the stranger lasted he had no right of pre-emption, he becomes entitled to claim the right of pre-emption as soon as his association with the stranger is brought to an end by his buying up the stranger. Whether one regards this change as amounting to the acquisition of a fresh right or as reviving a dormant or inchoate right, in either case it is an improvement in the status of the vendee for the purposes of pre-emption. I do not think the expression 'status' in section 21-A has been used in any technical sense. In my view the expression has been used synonymously with the word 'position'. It is this improvement in the position of the vendee during the pendency of the suit which was sanctioned by the Full Bench decisions that is sought to be prohibited by the section except where the improvement is brought about by inheritance or succession."

(37) This decision of the learned Chief Justice was affirmed in appeal. The Letters Patent Bench (constituted by G. D. Khosla and Falshaw, JJ., both of whom later adorned this Court as Chief Justices), disposed of the contention that the vendee had not improved his status by purchasing the interest of the stranger co-vendee in these words:—

"Mr. Tek Chand, contended that the sale by Banwari Lal in favour of defendant No. 23 could not be said to improve the status of the vendees and he drew our attention to some remarks of Beckett, J., in Ali Mohamad's case (10). In that case the vendees constituted of two proprietors and three strangers. Din Mohammad and Tek Chand, JJ., took the view that where a vendee having an equal right of pre-emption associates with himself in a joint purchase a stranger, he loses his right of pre-emption and cannot be allowed to retain even his own share of the purchase. Beckett, J., took a slightly different view, but it is clear that the sale must be considered as a single indivisible transaction and where the vendees consist of proprietors plus strangers the entity of the vendees is equivalent to that of a body of strangers. That being so, the sale by Banwari Lal amounts to an improvement in the status of the vendees and such improvement cannot defeat the pre-emptor's right. In Ali Mohd's case (10), which was

decided before section 21-A of the Punjab Pre-emption Act was enacted, it was held that when the strangers sold their shares to the other vendees, namely the proprietors, the pre-emptor's right could be defeated. I find myself in complete agreement with the reasoning of Din Mohammad and Tek Chand, JJ., in that case and am of the view that the decision of the learned Chief Justice was correct."

(38) It is thus apparent that the view propounded by the learned Single Judge in the case before us has the support of the high authority and speaking with respect, I have no hesitation in endorsing the view expressed by S. R. Das, C. J., and the Judges of the Letters Patent Bench in *Tej Ram's case* (1) and (2). In fact, the construction put by them on section 21-A of the Punjab Pre-emption Act is in consonance with the object with which this provision was introduced by the Amending Act 1 of 1944. By this amendment as has also been observed earlier, the Legislature clearly intended to recognise no voluntary improvement in the status of a vendee after the institution of the suit, but only those resulting from inheritance or succession. Apart from this, the view taken by me is in consonance with the rules of equity and if it is accepted as the correct rule of law, it would prevent genuine claims being rendered infructuous.

(39) I would, accordingly, answer the question of law stated in the opening part of the judgment in the negative, affirm the judgment and decree of the learned Single Judge and dismiss the appeal with costs.

HARBANS SINGH, C.J.—I agree.

P. C. JAIN, J.—I also agree.

K. S. K.

FULL BENCH

Before Gurdev Singh, R. S. Narula and Bal Raj Tuli, JJ.

DAYANAND ANGLO-VEDIC COLLEGE MANAGING  
COMMITTEE,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ No. 2058 of 1971.

August 12, 1971.

*Guru Nanak University Act (XXI of 1969)—Section 5(3)—Whether void for lack of territorial nexus—Punjab University located in Chand-*