APPELLATE CIVIL

Before Ranjit Singh Sarkaria, J

BALWANT SINGH AND OTHERS,—*Appellants*

versus

MEHAR SINGH AND OTHERS,—*Respondents.*

Regular Second Appeal No. 1306 of 1966

July 28, 1967

Punjab Pre-emption Act (I of 1913)—S. 15(1)(a) Fourthly and (c) Fourthly—'Holds'—Meaning of—Tenant forcibly dispossessed by vendee from the land comprised in his tenancy—Whether deemed to be 'holding' land.

Held, that the word 'holds' in section 15(1)(a) fourthly and (1)(c) fourthly of the Punjab Pre-emption Act, 1913, is not to be construed in isolation, but is to be read along with the succeeding words 'under tenancy'. No doubt, the word 'hold' includes in its ordinary dictionary sense, "to have, to keep one's own, to own one's property, to be in possession or enjoyment of, to occupy, to sustain, etc.". But a right of tenancy does not merely mean the act of physical possession. It also includes a bunch of incorporeal rights which are not capable of physical possession. The landlord, his assignees, or the vendees cannot, by their act of forcible dispossession of the tenant, put an end of his tenancy.

Held, that since the vendees could not, by forcibly dispossessing the tenant, put an end to the tenancy which he held under the vendor at the date of the sale, the wrongful eviction of the tenant by the vendee is no eviction in the eye of law. The plaintiff-respondent would continue to hold his rights as a tenant, including the right to immediate possession and cultivation of the land, notwithstanding his wrongful ouster by the vendees, who could not be allowed to take advantage of their own wrong. In other words, the plaintiff-pre-emptor will be deemed to continue in legal possession of the land, which was comprised in his tenancy under the vendor at the date of the sale, right up to the date of the pre-emption suit and the date of the decree of the trial Court in his favour.

Second Appeal from the decree of the Court of the District Judge, Bhatinda, dated the 11th day of October, 1966 affirming with costs that of the Sub-Judge, II Class, Bhatinda, dated the 30th June, 1966 granting the plaintiff a decree for possession by pre-emption of land in suit except Khasra Nos. 69/18, 23, measuring 16 Kls. on payment of Rs. 2,400 in all, the proportionate price of the land : and

expenses with costs, and further ordering that 1/5th of the pre-emption amount was already lying deposited in Court and the remaining re-emption amount would be deposited by the pre-emptor on or before 27th July, 1966, failing which the suit would stand dismissed with costs.

K. N. TEWARI, ADVOCATE, for the Appellants.

H. L. SONI, ADVOCATE, for the Respondents.

JUDGMENT

SARKARIA, J.—This Regular Second Appeal No. 1306 of 1966, arises out of the following facts:—

Kundan Lal, Thakar Dass and Topan Dass sold 116 *kanals* 14 *marlas* of agricultural land, situated in the area of village Jaga Ram Tirath, district Bhatinda, for Rs. 2,500, to Balwant Singh, Chetan Singh, Sukhdev Singh, etc., by a registered deed, dated 3rd June, 1964. On 4th June, 1965, Mehar Singh, son of Mastan Singh, instituted a suit for possession by pre-emption of the aforesaid land on the ground that he was holding the suit land as a tenant under the vendors at the date of the sale. The vendee-defendant resisted the suit, *inter alia*, on the ground that the plaintiff did not possess the necessary qualification to pre-empt the sale. The trial Court framed as many as 5 issues. All the material issues were decided against the vendees, and in favour of the plaintiffs. In the result, a decree for possession by pre-emption in respect of the suit land, with proportionate costs, was passed in favour of the plaintiffs. The vendees appealed to the District Judge, who by his judgment, dated 11th October, 1966, dismissed the appeal, and affirmed the decree of the trial Court. Aggrieved by that decree, the vendees have come up in second appeal to this Court.

Shri Kedar Nath Tewari, the learned counsel for the appellants, contends that the plaintiff-pre-emptor ceased to hold the land in suit since Kharif, 1964, i.e one month before the date of the sale, and, ever since, he has continued to be out of possession. In support of his contention, the learned counsel has referred to an admission wrung out from Mehar Singh, plaintiff pre-emptor, in cross-examination, when he was in the witness-box. In answer to a question put by the vendees' counsel Mehar Singh, as P.W. 3, stated, that he had taken the land from Kundan, co-sharer, on lease (*theka*) about 13 years

ago, but 2 years and 1 month before his deposition, Kishan Singh and others (vendees) forcibly dispossessed him, whereupon the witness filed a suit. Mehar Singh made this statement in the witness-box on 19th May, 1966. Counsel counts 2 years and one month back from this date and argues that according to the admission of Mehar Singh, he was dispossessed on the 18th or 19th April, 1964, i.e. about one month and 15 days before the sale, dated 3rd June, 1964. Mr. Soni, the learned counsel for the plaintiff-respondent, contends that this statement of Mehar Singh has to be read along with the documentary evidence of the Khasra Girdawari, Exhibit P. 2, and Jamabandi, Exhibit P. 1, and that Mehar Singh, being an illiterate rustic villager, was not expected to depose with precision and exactitude, the date and the month of his forcible dispossession. It is urged that the question as to whether Mehar Singh plaintiff was in possession of the suit land as a tenant under the vendor on the date of the sale, was a question of fact and the concurrent finding of the two Courts below in his favour could not be reopened in this second appeal. I think, the contention of the learned counsel for the respondent must prevail. This admission made by Mehar Singh in cross-examination, had to be read along with the Khasra Girdawari, Exhibit P. 2, and Jamabandi, Exhibit P. 1. The Jamabandi, Exhibit P. 1, of the year 1960-61, shows that Mehar Singh was then in possession of the suit land as a tenant under the vendors. Khasra Girdawari, Exhibit P. 2, relates to the period from Kharif 1961 to Rabi 1965. It shows that right up to Kharif, 1964, Mehar Singh continued to be in cultivating possession of the land as a tenant under the vendors. The change comes for the first time in Kharif, 1964. The entry pertaining to that crop, rendered into English reads as follows:—

> "Balwant Singh, Gurdev Singh, Chetan, Bharpur Singh, Balbir Singh, Sukhdev Singh, sons of Kishen Singh, *ghair maurusi*, without *lagan*, on account of sale."

It is thus clear that the vendees took forcible possession only after the sale in their favour on 3rd June, 1964. In the sale-deed itself, it is recited that possession has been given to the vendees, on the date of the sale. It cannot, therefore, be said that the lower Courts have mis-read the evidence. There is no reason, whatever, to disturb their concurrent finding that the plaintiff pre-emptor was in possession of the suit land as a tenant under the vendor on the date of the sale.

The only question that further remains to be determined is, whether the plaintiff could be non-suited merely because after the sale, he ceased to have possession of the land comprised in his tenancy on account of his *forcible* dispossession by the vendees. According to Mr. Tewari, the word 'holds' occurring in clause *fourthly* of section 15(1)(c) of the Punjab Pre-emption Act, includes "occupation" or "physical possession" as its essential element, which in this case was missing inasmuch as the plaintiff ceased to have his necessary qualifications under the aforesaid clause at the date of the suit and also of the decree of the trial Court in his favour. It is immaterial, urges the counsel, whether he ceased to be in possession of his own volition or gave it up in deference to the demand made by the vendees. In support of this contention, reliance has been placed on the recent dictum of Sharma J, in regular second appeal 97 of 1962, reported as *Baru Ram* vs. *Manji Ram* (1), that the plaintiff pre-emptor, who has based his right to pre-empt the sale on the provisions made in section 15(1) (c) of the Punjab Pre-emption Act, must be holding the land under tenancy of the vendor at the time of the sale and continued to hold it on the basis of the same right up to the date of the decree. In that case, there was a clear cut finding of the trial Court that the plaintiff, who had based his claim under section 15(1)(c) of the Punjab Pre-emption Act was a tenant of the suit land at the time of the sale, but not at the time of the institution of the suit and passing of the decree. In consequence, the trial Judge dismissed the suit. The plaintiff appealed to the District Judge, before whom the only point agitated, was, that the plaintiff was in possession of the entire land in dispute at the time of the sale, which alone was sufficient to entitle him to the decree prayed for, because in the nature of things he could not hold the land as *vendor's* tenant at the time of the institution of the suit and the date of the decree. This plea found favour with the District Judge, who accepted the appeal and reversed the decree of the trial Court. The decree of the District Judge was assailed before Sharma J., in second appeal by the vendee-defendant. Thus, in that case, there was a concurrent finding of fact of 2 Courts that the plaintiff was not holding the land as a tenant at the time of the institution of the suit and passing of the decree.

From the facts of the case as reported, it does not appear that in that case, also, the plaintiff-tenant had been forcibly dispossessed

(1) 1967 P.L.R. 608.

by the vendees after the sale. He might have relinquished the tenancy of his own free will subsequent to the sale. In the present case, there is no such finding of the Courts below that Mehar Singh had ceased to hold the suit land as a tenant under the vendor at the date of the sale. Thus, *Baru Ram's* case is distinguishable from the one before me.

In the instant case, all that stands established, is that the plaintiff-tenant was forcibly dispossessed after the sale, by the vendees, and he continued to be out of possession at the date of the suit and also at the date of the decree of the trial Court. Clause fourthly of section 15 of the Punjab Pre-emption Act reads as follows:—

> 15(1) "The right of pre-emption in respect of agricultural land and village immovable property shall vest—
>
> (a) Fourthly, in the tenant who holds under tenancy of the vendor the land or property sold or a part thereof;
>
> (1)(c) where the sale is of land or property owned jointly and is made by all the co-sharers jointly,—
>
> Fourthly, in the tenants, who hold under tenancy of the vendors or any one of them the land or property sold or a part thereof."

The word 'holds' is not to be construed in isolation, but is to be read along with the succeeding words 'under tenancy'. No doubt, the word 'hold' includes in its ordinary dictionary sense, 'to have, to keep one's own, to own one's property, to be in possession or enjoyment of, to occupy, to sustain, etc.'. But a right of tenancy does not merely mean the act of physical possession. It also includes a bunch of incorporeal rights which are not capable of physical possession. The landlord, his assignees, or the vendees could not, by their act of forcible dispossession of the tenant, put an end to his tenancy. Sections 7 and 7-A of the Pepsu Tenancy and Agricultural Lands Act, 1955, make it clear that no tenancy shall be terminated except in accordance with the provisions of that Act or except on any of the grounds enumerated in that Act, namely, '(1) Failure to pay rent. (2) Subletting the land without the consent in writing of the landowner. (3) Failure to cultivate land personally in the manner and to the

extent customary in the locality. (4) Using the land in a manner likely to render it unfit for the purpose for which it was leased to him. (5) Refusal to execute a *kabuliat* in respect of his tenancy. (6) Land comprised in the tenancy being reserved by the landowner for his personal cultivation. (7) Landowner owns 30 standard acres or less and tenancy land falls within the permissible limit of the landowner.'

In the case before me, there was no legal termination of the tenancy of Mehar Singh in any of the modes enumerated above. The vendees could not, by forcibly dispossessing the tenant, put an end to the tenancy which he held under the vendor at the date of the sale This wrongful eviction of the tenant is no eviction in the eye of law. The plaintiff-respondent would continue to hold his rights as a tenant, including the right to immediate possession and cultivation of the land, notwithstanding his wrongful ouster by the vendees, who could not be allowed to take advantage of their own wrong. In other words, the plaintiff-pre-emptor will be deemed to continue in legal possession of the land, which was comprised in his tenancy under the vendor at the date of the sale, right up to the date of the said suit and the date of the decree of the trial Court in his favour.

Any other view of the matter would set the beneficent provisions of the aforesaid clause *fourthly* at naught. This clause was enacted as welfare measure in keeping with the settled policy of transferring agricultural land to the tiller. If the ratio of *Babu Ram's case* were to be unreasonably stretched so as to cover a case of the kind before me, then all that the vendee has to do to defeat the tenant pre-emptor's right of pre-emption under the aforesaid clause, is to forcibly dispossess him after the sale and before the institution of the suit or even the passing of the decree, and plead that since the tenant had ceased to be in physical occupation of the land after the sale and at the date of the suit and the decree, he could not be said to be a tenant *holding* under tenancy of the vendor at the date of the suit and the decree.

In the light of what has been said above, I would dismiss this appeal. and maintain the decree of the Courts below. In view of the law point involved. however. I would leave the parties to their own costs of this appeal.

R.N.M.