shortfall on the resale. The essential pre-requisite of a completed sale being missing we feel constrained to hold that no liability can arise under the bidding which did not result in a completed sale. The learned Single Judge did not assail the cogency of the reasoning in the Judgment of Kapur J. but considered that its acceptance would nullify the statutory rules embodied in clause 21 of rule 5.34. As in our view there is neither any inconsistency between the statutory rule and condition 33 nor is there any denial in the form of the final authority which undoubtedly vested in the Chief Commissioner in excise matters either expressly or by implication, full effect has to be given to clause 33 which formed an essential condition of a completed sale. The plaintiffs cannot, therefore, be made accountable in respect of sale for which their liability did not arise.

In this view of the matter, we allow the appeal and restore the judgments of the Courts below. In the circumstances, we make no order as to costs of this appeal.

D. K. MAHAJAN, J.—I agree.

K.S.K.

FULL BENCH

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

GANGA RAM AND OTHERS,—*Appellants*

versus

SHIV LAL,—*Respondent.*

Regular Second Appeal No. 1486 of 1961

1963

August, 27th.

Code of Civil Procedure (Act V of 1908)—Order 20 Rule 14(1)—Title of pre-emptor to pre-empted property—when accrues—Whether on deposit of price in Court on or

taking possession of the property—Punjab Security of Land Tenures Act (X of 1953) as amended by Amendment Act (IV of 1959)—Section 17-A—Scope of—Pre-emptor having paid the price of the pre-empted land in terms of the decree before 30th July, 1958, but not having obtained possession thereof—Whether entitled to a declaratory decree that he had become the owner of the land by virtue of the pre-emption decree.

Held that the title to the pre-empted property passes to a pre-emptor under a pre-emption decree on deposit of the purchase money in th terms of the decree and is deemed to pass to him from the date of the deposit according to Order 20 rule 14(1) of the Code of Civil Procedure, 1908. The rule does not cast a duty upon the plaintiff to obtain possession of the property as did section 214 of the Code of 1882, rather it says to the contrary that it is the duty of the defendant to deliver up possession of the property to the plaintiff-pre-emptor.

Held, that sub-sections (1) and (2) of section 17-A of the Punjab Security of Land Tenures Act, 1953, as amended by the Amendment Act IV of 1959, concern only three matters, (a) the taking away of the right of pre-emption in the terms and from the date as appearing in first part of sub-section (1), (b) the rendering of pre-emption decrees obtained after April, 1953, the date of the commencement of Punjab Act 10 of 1953, to which Punjab Act 4 of 1959 is an amendment, inexecutable, according to second part of sub-section (1), and (c) nullification of the effect of possession obtained by a pre-emptor under a pre-emption decree, after April 15, 1953, should the tenant move according to the terms of sub-section (2). There is no fourth case which is dealt with in sub-sections (1) and (2) of section 17-A. The language of these sub-sections is plain and does not admit of any ambiguity which may attract any rule of interpretation or construction whereby any other case may be read into those sub-sections as falling within the purview of the same. A pre-emptor who had obtained the pre-emption decree with regard to land and deposited the purchase money before July 30, 1958, when section 17-A came into force but did not obtain possession of the land before that date is not entitled to execute that decree but is entitled to obtain a declaratory decree to the effect that

he had become the owner of the land by virtue of the pre-emption decree.

Case referred by the Hon'ble Mr. Justice D. K. Mahajan, on 2nd January, 1962, to a larger Bench for decision of the important 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 14th September, 1962, due to importance of question of law involved in the case. The Full Bench consisting of the Hon'ble Mr. Justice Mehar Singh, the Hon'ble Mr. Justice A. N. Grover and the Hon'ble Mr. Justice Shamsher Bahadur, after deciding the questions referred to them returned the case to the Single Judge on 4th December, 1962 and the case was finally decided by Hon'ble Mr. Justice D. K. Mahajan on 24th October, 1963.

Regular Second Appeal from the decree of the Court of Shri G. S. Bedi, District Judge, Rohtak, dated the 23rd June, 1961, affirming with costs that of Shri Onkar Nath, Sub-Judge, Ist Class, Rohtak, dated the 13th August, 1960, granting the plaintiff a declaratory decree to the effect that the plaintiff was owner of the land in dispute from 8th May, 1958, and holding that he is not entitled to possession of it in execution of his decree dated 20th March, 1958, and the defendants would remain in possession of it as tenants under him and leaving the parties to bear their own costs.

ANAND SWAROOP AND R. S. MITTAL, ADVOCATES, for the Appellants.

RAM RANG AND NARESH CHAND, ADVOCATES, for the Respondents.

ORDER

MEHAR SINGH, J.—The full facts of the case are given in my reference order of September 14, 1962, which is to be read as part of this judgment, and it is not necessary to restate the same here. These are the two questions that are for consideration of this Bench— Mehar Singh, J.

(1) When does title pass to a pre-emptor or his substitution takes place for the vendee

Ganga Ram and others
v.
Shiv Lal

Mehar Singh, J.

under a pre-emption decree, in other words does the title pass on deposit of the purchase-money according to Order 20, rule 14(1) of the Code of Civil Procedure or does it only pass on the pre-emptor, after payment of the purchase-money, obtaining possession of the pre-empted property pursuant to the pre-emption decree?

(2) Whether, although the facts of the present case do not directly attract either sub-section (1) or sub-section (2) of section 17-A of Punjab Act 4 of 1959, those provisions can be so read and interpreted as to cover a case like the present, in which the pre-emptor holds a pre-emption decree which has satisfied the conditions of Order 20, rule 14(1) of the Code of Civil Procedure but is not executable under sub-section (1) of section 17-A, and in spite of this because of the provisions of section 17-A he is to be deprived from obtaining a declaratory decree in regard to his title to the pre-empted land?

In the Code of Civil Procedure of 1882, section 214 provided—

"When the suit is to enforce a right of pre-emption in respect of a particular sale of property, and the Court finds for the plaintiff, if the amount of purchase-money has not been paid into Court, the decree shall specify a day on or before which it shall be so paid, and shall declare that on payment of such purchase-money, together with the costs (if any) decreed against him, the plaintiff shall obtain possession of the

property, but that if such money and costs are not so paid the suit shall stand dismissed with costs."

This section came in for consideration in *Deokinandan* v. *Sri Ram* (1), by a Full Bench of five Judges. The judgment of the majority, which consisted of four Judges, was delivered by Sir John Edge C.J., and, so far as the present matter is concerned, the learned Chief Justice expressed himself thus—

"I must regard the decree in the now-defendant's pre-emption suit as one which merely avoided the sale to the now-plaintiffs as from the date when that decree became final by the payment in accordance with the decree by the present defendant of the pre-emption price which was decreed, and as vesting in him the rights of ownership as from that date only. From that date the now-plaintiffs, original vendees, became in law divested of all interest in the property, and consequently in my opinion could not be entitled to any profits which subsequently accrued due, whether at that date or subsequently the successful pre-emptor obtained possession of the property. To hold that the successful pre-emptor's rights would in such a case be postponed until he had obtained possession of the property, would be to vary or stultify the decree which had been made, and would encourage defeated defendants in a pre-emption suit to resist and obstruct as long as possible the execution of a decree which had been duly obtained."

(1) (1890) 12 All. 234

Ganga Ram and others
v.
Shiv Lal

Mehar Singh, J.

The dissenting opinion was delivered by Mahmood J., who proceeded on the pre-emption decree having been framed in conformity with the requirements of section 214 of the Code of 1882 and possession of the property having been obtained by the successful pre-emptor in execution of that decree, and then held that the terms of the decree were fulfilled on the date the successful pre-emptor obtained possession of the property under the decree and ownership in the property did not vest in him until he had obtained possession of it and that his actual substitution as owner of the pre-empted property must date with his taking possession under the decree. The opinion of Mahmood J., was approved by their Lordships of the Privy Council in *Deonandan Parshad Singh* v. *Ramdhari Chowdhri* (2) which was also a case under section 214 of the Code of 1882. Their Lordships, while approving that opinion and following it, observed—"Their Lordships fear that this opinion, to which they are compelled by the terms of the Code, may involve some hardship upon the plaintiffs; but it must be remembered that this is due to two matters, one of which was wholly and the other to some extent under the plaintiffs' control". It appears that the matter 'wholly under the plaintiffs' control' to which their Lordships referred was the deposit of the pre-emption money under the decree and the other matter concerned the plaintiff obtaining possession after the deposit. This is, at least, how I understand this observation of their Lordships. The reason why I have reproduced this observation is that their Lordships felt that the provisions of section 214 of the Code of 1882 in some ways did lead to hardship. In the Code of Civil Procedure of 1908 the comparable provision to section 214 of the Code of 1882 is Order 20, Rule 14(1), which is in these terms—

(2) A.I.R. 1916 P.C. 179

"14. (1) Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall—

(a) specify a day on or before which the purchase-money shall be so paid, and

(b) direct that on payment into Court of such purchase-money, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs."

The change in law thus brought about is obvious. Under section 214 of the Code of 1882 it was the duty of the plaintiff obtaining the pre-emption decree (a) to deposit the purchase-money in accordance with the terms of the decree, and (b) to obtain possession of the pre-empted property thereafter. It is because of these conditions that it was held that his substitution for the vendee or his title to the property did not take effect until he had complied with both these conditions. In the present Code, on such a decree having been passed in favour of a plaintiff, (a) it is the duty of the plaintiff to deposit the purchase-money in terms of the decree, (b) it is the duty of the defendant to deliver possession of the property to the plaintiff, and (c) the title of the plaintiff is deemed to have accrued from the date of payment of purchase-money in terms of the decree. The different approach in the two provisions is immediately apparent. The new rule in substance accepts the dictum of the majority in

Ganga Ram and others
v.
Shiv Lal

Mehar Singh, J.

Deokinandan's case and avoids the type of hardship that their Lordships had in view in *Deonandan Prashad Singh's case*. It is now made clear beyond any argument that on the successful plaintiff-pre-emptor making deposit of the purchase-money in terms of the pre-emption decree in his favour, the title to the pre-empted property is deemed to have passed to him from the date of such payment. There is no manner of doubt in this. It remains then the duty of the defendant to deliver up the property to the plaintiff. To my mind it is the clearest position that plaintiff-pre-emptor gains title to the pre-empted property under this rule immediately as he makes a deposit of the purchase-money in the terms of the decree and his title is effective from the date of such deposit. I have already in the reference order cited two Full Bench cases from the Lahore High Court in which the learned Judges have in no uncertain terms held that in the Punjab title under a pre-emption decree passes on the making of the deposit of the purchase-money under rule 14(1) of Order 20. Reference of this question has been necessitated by the decision of their Lordships of the Supreme Court in *Bishan Singh* v. *Khazan Singh* (3), in which at pp. 844 and 845 their Lordships approved the dictum of the Privy Council in *Deonandan Prashad Singh's* case that the actual substitution of the owner of the pre-empted property dates with possession under the decree. That was a case of rival pre-emptors. One of the pre-emptors obtained pre-emption decree, but, before he made deposit of the purchase-money in terms of the decree, the second rival-plaintiff sought to pre-empt the same sale. One of the arguments considered by their Lordships on behalf of the first plaintiff-pre-emptor was that the decree obtained by him, where under his right of pre-emption was recognised, clothed him with the title to the property so as to

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

deprive the second plaintiff-pre-emptor of the equal right of pre-emption. It was when considering this argument that their Lordships observed that substitution under a pre-emption decree takes effect only when the decree-holder complies with the condition of the decree and takes possession of the property. On the facts of the case, it is clear that when the second plaintiff-pre-emptor instituted his pre-emption suit, at that time the first plaintiff-pre-emptor had not yet complied with the decree in his favour because he had not yet made deposit of the purchase-money under the decree in his favour. Consequently even in terms of rule 14(1) of Order 20 his title to the property had not accrued by then. It was probably in these circumstances that no reference by the learned counsel was made at the time of the arguments to Order 20, rule 14(1), in that case. One thing is clear that their Lordships were not considering Order 20, rule 14(1) and have not given their decision on this rule. In my opinion *Bishan Singh's* case (3) cannot be read so as to virtually render infructuous a part of rule 14(1) of Order 20, and to relegate the position of a successful plaintiff-pre-emptor to that under section 214 of the Code of 1882. So this case, in my opinion, does not decide that under rule 14(1) of Order 20 the title of a plaintiff-pre-emptor under a pre-emption decree in his favour does not accrue to him until he has obtained possession of the property, for the rule itself, in so many words says that his title to the pre-empted property shall be deemed to have accrued from the date of the deposit of the purchase-money. The learned counsel for the defendant, who is appellant here, has contended that what rule 14(1) of Order 20 means is that when a plaintiff-pre-emptor has obtained possession of the pre-empted property under a pre-emption decree, it is then that his title to such property is deemed to date back from the date of the deposit of the purchase-money in the terms of the decree, but

Ganga Ram and others
v.
Shiv Lal

Mehar Singh, J.

that if he does not obtain possession of the property under the decree there is no accrual of title to him. This argument, to my mind, runs quite contrary to the simple and straight words in the rule. This rule does not cast a duty upon the plaintiff to obtain possession of the property as did section 214 of the Code of 1882, rather it says to the contrary that it is the duty of the defendant to deliver up possession of the property to the plaintiff-pre-emptor. This argument, in my mind, is without substance. On this view, my answer to the first question is that title to the pre-empted property passes to a pre-emptor under a pre-emption decree on deposit of the purchase-money in the terms of the decree and is deemed to pass to him from the date of the deposit.

I have reproduced *in extenso* section 17-A of Punjab Act 4 of 1959 in the reference order and have also pointed out that sub-sections (1) and (2) of this section concern only three matters, (a) the taking away of the right of pre-emption in the terms and from the date as appearing in first part of sub-section (1), (b) the rendering of pre-emption decrees obtained after April 15, 1953, the date of the commencement of Punjab Act 10 of 1953, to which Punjab Act 4 of 1959 is an amendment, inexecutable, according to the second part of sub-section (1), and (c) nullification of the effect of possession obtained by a pre-emptor under a pre-emption decree, after April 15, 1953, should the tenant move according to the terms of sub-section (2). I have also pointed out that there is no fourth case which is dealt within sub-sections (1) and (2) of section 17-A. The language of those sub-sections is plain and does not admit of any ambiguity which may attract any rule of interpretation or construction whereby any other case may be read into those sub-sections as falling

within the purview of the same. The plaintiff here obtained pre-emption decree against the defendant before the coming into force of section 17-A of Punjab Act 4 of 1959, which section came into force on July 30, 1958, when enacted by Punjab Ordinance 6 of 1958, and in the terms of the pre-emption decree be made a deposit of the purchase-money under rule 14(1) of Order 20 before July 30, 1958. To my mind, his title to the pre-empted property thus must be deemed to have accrued from the date of such deposit, in other words, before the enactment of section 17-A by Punjab Ordinance 6 of 1958 on July 30, 1958. Afterwards he has tried to put the decree into execution even before the enactment of that provision. At an earlier hearing there was some controversy between the parties whether or not he had obtained symbolical possession of the pre-empted property before that date. An issue was settled and the matter was referred to the trial Judge for trial with a direction that his report should be submitted with the opinion of the District Judge or the first appellate Court on the issue. The concurrent finding in their reports of the Courts below is that the plaintiff did obtain symbolical possession of the pre-empted property under the pre-emption decree before July 30, 1958. The learned counsel for the defendant has referred to Order 21, rules 35(2) and 36, of the Civil Procedure Code pointing out that symbolical possession can only be delivered under the Code in accordance with those rules and in no other case, and, further, that the case of the plaintiff can by no stretch of the language of those rules be brought within the purview of the same. This is correct. The learned counsel has then referred to *Kaku Singh* v. *Gobind Singh* (4) in which my learned brother Grover J., held that delivery of symbolical possession given in circumstances in which actual possession ought to

(4) A.I.R. 1959 Punj. 468

Ganga Ram and others
v.
Shiv Lal

Mehar Singh, J.

have been given is a nullity as symbolical possession is not actual possession nor is it equivalent to actual possession except where the Code of Civil Procedure expressly or by implication provides that it should have that effect. The learned counsel, therefore, urges that the plaintiff's having obtained symbolical possession in this case to which Order 21, rules 35(2) and 36, can have no possible application must be held to have no bearing on the merits of the case for the only possession to which the plaintiff was under the pre-emption decree, entitled was the actual physical possession of the pre-empted property. This appears to be correct. The learned counsel for the plaintiff has, however, made reference to *Shew Bux Mohata* v. *Bengal Breweries Ltd.* (5), in which their Lordships held that under Order 21, rule 35, a person in possession and bound by the decree has to be removed only if necessary, that is to say, if necessary to give the decree-holder the possession he is entitled to and asks for. But it is open to the decree-holder to accept delivery of possession under that rule without actual removal of the person in possession. If he does that, then he cannot later say that he has not been given that possession to which he was entitled under the law. This case does not advance the argument on the side of the plaintiff because it only refers to the conduct of such a decree-hoder having obtained symbolical possession where he was entitled to actual possession operating as estoppel against him. In the circumstances the obtaining of the symbolical possession of the pre-empted property by the plaintiff in this case may be ignored as having no bearing on the merits of the question under consideration. So the plaintiff who cannot execute the pre-emption decree in his favour after July 30, 1958, is left with a pre-emption decree in his favour with such title to the pre-empted property as accrued to him on his having

(5) A.I.R. 1961 S. C. 137

complied with the terms of the decree within the scope of Order 20, rule 14(1), and that too before July 30, 1958. On the date section 17-A came into force, the plaintiff had title to the pre-empted property. When he sought to have mutation in this respect effected in his favour that was denied to him by the revenue authorities, thus casting a cloud upon his title, and it is then that he has been forced to come to Court seeking declaration of his title to the property. He seems to have been caught in the run of circumstances and there is nothing done on his part which indicates that he has attempted to stultify or evade the provisions of section 17-A of Punjab Act 4 of 1959. The case of a plaintiff-pre-emptor as the plaintiff in the present case is not at all within the words and scope of sub-sections (1) and (2) of section 17-A. The plaintiff obtained the pre-emption decree before the right of pre-emption was taken away under sub-section (1) of that section, he obtained title to the property under that decree before July 30, 1958, he has not obtained possession of the pre-empted property in the terms of the pre-emption decree, and in this suit he is not trying to execute the pre-emption decree for he does not seek possession of the pre-empted property. A case like this is entirely outside the meaning and scope of sub-sections (1) and (2) of section 17-A for, as pointed out, those sub-sections only concern three matters and specifically to which reference has been made above. Now, if the case of the plaintiff is to be brought within the scope of sub-sections (1) and (2) of section 17-A, it cannot be done without reading something into either or both of those sub-sections, which does not appear in the same. The language of the sub-sections being plain, I have never understood that it is a rule of construction that a Court is entitled to read something in a statutory provision which is not there. The reason for this is simple that that would amount

Ganga Ram and others
v.
Shiv Lal

Mehar Singh, J.

to legislation and that is not the function of a Court. So in my opinion sub-sections (1) and (2) of section 17-A of Punjab Act 4 of 1959 cannot be read or interpreted so as to cover a case like the present without doing violence to the language of the provisions which to my mind is not permitted under any rule of interpretation or construction.

It has been said that to allow the present plaintiff to have a declaratory decree that he claims that he has obtained a title to the pre-empted property under the pre-emption decree would be to defeat the purpose of section 17-A in that he would become the owner of the property and the defendant as tenant would not have protection under sub-section (2) of section 17-A. But even sub-section 2 of section 17-A envisages that in certain circumstances in a case like the present where the additional fact is that the pre-emption decree has already been executed against him by dispossessing him after April 15, 1953, a tenant may continue to remain tenant with his own consent. It is pointed out that now element of his consent no longer exists and he is compelled to do so. This is correct. However, this is far from saying that it is a contingency which in any circumstances is not envisaged by sub-section (2) of section 17-A. But it is not any conduct on the part of the plaintiff whereby he is trying to defeat the provisions of section 17-A. He has been caught in a net of circumstances and out of that he is attempting to clarify his own title with regard to the property. This he is doing in accordance with law and as the case, is, in my opinion, clearly outside the provisions of section 17-A, the question of defeating those provisions because of granting a declaratory decree as sought by the plaintiff really does not arise.

The question of maintainability of declaratory suit by the plaintiff has also been in discussion on

the ground that the plaintiff has not asked for consequential relief. He cannot execute the pre-emption decree in view of second part of sub-section (1) of section 17-A of Punjab Act 4 of 1959. He has title to the property. The defendant has protection of his status as tenant under section 6 of Punjab Act X of 1953 inspite of the transfer of the title under the pre-emption decree in favour of the plaintiff. Of course, that protection is subject to the terms of section 6 of that Act, but that is a matter which obviously cannot be in controversy in a civil Court because it is a matter that will arise when eviction of the defendant as tenant is sought. Now, eviction of the defendant as tenant can only be obtained under the provisions of Punjab Act No. 10 of 1953 and not in a civil Court as jurisdiction of civil Court is barred in such matters under section 25 of that Act. Thus the plaintiff cannot claim possession of the property as against the defendant as tenant in a civil Court and if he seeks to have possession of the property by eviction of the defendant as tenant, he will have to have recourse to proceedings under Punjab Act X of 1953 for the purpose. It follows that there is no consequential relief that the plaintiff could claim in the civil Court and so this consideration he cannot be denied declaration he seeks. Another matter has come in for consideration and that is whether in the circumstances of the present case discretion should be exercised in favour of the plaintiff in granting a declaratory decree to him, when the effect of that would be to defeat the provisions of section 17-A. I have already pointed out that the decree does not really defeat the provisions of section 17-A for the claim of the plaintiff is entirely outside the provisions of that section. With the granting of the declaration as sought by the plaintiff the position of the parties in regard to their rights in the property is clear leaving no ambiguity or difficulty whatsoever.

Ganga Ram and others
v.
Shiv Lal

Mehar Singh, J.

The plaintiff-pre-emptor becomes the owner of the property, and the defendant continues as tenant of it. He of course has not the advantage of sub-section (2) of section 17-A but he can still purchase the land in terms of section 18 of Punjab Act 10 of 1953. The rights are different under the two provisions. At least this much is clear that the rights of the parties in regard to the property become defined in this manner. What is the effect of the denial of the declaration to the plaintiff as claimed by him? The plaintiff has a valid decree in his favour which is subsisting and as he has complied with the terms of the decree, under it he has title to the property. That title cannot possibly pass to the defendant. No provision either in the original Punjab Act 10 of 1953 or the amending Punjab Act 4 of 1959 enables the defendant to gain title to this property except as a tenant under section 18 as has already been pointed out. The effect of the dismissal of the suit of the plaintiff will be that neither party would know the nature of its title to the property. In addition, there is another matter and that is that in compliance with the pre-emption decree the plaintiff has paid the purchase-money in Court. The decree has been complied with and the plaintiff has ceased to have any right to the money. He cannot now claim back that amount. It has been said that this Court may order refund of that amount to the plaintiff under its inherent powers, possibly under section 151 of the Civil Procedure Code. To my mind there is no such power in this Court. Ordering of refund of the purchase-money paid under the pre-emption decree would amount to re-opening that decree, which can only be done either on review by the trial Court or on appeal by the appellate Court, and not otherwise. It cannot be done in a suit like the present. To my mind, this Court has no jurisdiction to make an order like this. It has no power to vary or practically set aside the pre-emption

decree obtained by the plaintiff according to law and still a valid and subsisting decree. The consequence then is that the plaintiff cannot have the amount back. In sub-section (2) of section 17-A of Punjab Act 4 of 1959 at least one thing is made clear that when in execution of a pre-emption decree obtained after April 15, 1953, a pre-emptor has obtained possession before July 30, 1958, where the vendee is the tenant, the vendee can regain possession of the land on repayment of the amount accepted by him under the pre-emption decree, but if he chooses not to take that course and chooses to remain tenant of the land he can do so and as the pre-emptor remains the owner of the property, the tenant-vendee is not required to pay him back the purchase-money received by him under the pre-emption decree. In the present situation if the plaintiff is denied the declaration he seeks, the cloud cast upon his title is not removed and he has lost the purchase-money paid under the pre-emption decree which he cannot recover. Apart from this, the title of neither party to the property is clear in these circumstances for while under the pre-emption decree the plaintiff has obtained the title, when a cloud is cast on that he is being denied declaration of that title, and yet the defendant as tenant has not and does not become owner of it. This leaves the state of affairs in a most uncertain and unsatisfactory manner, and rather detrimental to both parties. It is in these circumstances that the question has to be considered whether or not the plaintiff be granted declaration as claimed by him. No doubt the remedy is discretionary, but in my mind there is not the least hesitation that this is a proper case for the grant of this remedy to the plaintiff and exercise of the discretion of the Court in his favour as has been done by the Courts below.

In my opinion, the answer to the second question is that the case of the plaintiff is outside the scope of

Ganga Ram and others
v.
Shiv Lal

Mehar Singh, J.

section 17-A as inserted by the amending Punjab Act 4 of 1959 in the Principal Punjab Act 10 of 1953 and by no strained interpretation or construction can this case be brought within the meaning and scope of that section.

Grover, J.

GROVER, J.—I agree with the answers given by my learned brother, Mehar Singh, J.

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—Of the two questions before the Full Bench, I am in agreement with my learned brother Mehar Singh, J. that the plaintiff became the owner of the suit property on 8th of May, 1958, when he deposited the sum of Rs. 6,150, as he was required to do, for obtaining possession of the land under the pre-emption decree. The language of clause (1) of rule 14 of Order 20 of the Code of Civil Procedure, in contradistinction with the provisions of the corresponding section 214 of the Code makes it clear that the title to the property in a pre-emption suit "shall be deemed to have accrued from the date of such payment". Physical substitution of the pre-emptor for the vendee is not essential under Order 20, rule 14(1) for the passing of the title as was the view of their Lordships of the Privy Council *in Deonandan Prashad Singh* v. *Ramdhari Chowdhri* (2), on a construction of section 214 of the Code of Civil Procedure, in which there was no mention about the passing of the title to the pre-emptor on payment of the deposit of the purchase-money on the date fixed by the Court.

So far as the second question in the reference is concerned, I did not at first see my way clear to grant the relief which the plaintiff has asked for. It has to be borne in mind that the plaintiff seeks only a declaration to the effect that he is the lawful owner of the suit property comprising of land in respect of

which he was successful in obtaining a decree for pre-emption and acquired a virtual title in it on 8th of May, 1958. It is no doubt true, as observed by Mehar Singh, J., that section 17-A of the Punjab Security of Land Tenures Act, 1953, which was inserted by an amendment in the Act on 30th of July, 1958, is concerned with three matters and three only. In the first place, under sub-section (1) of section 17-A sale of land comprising the tenancy of a tenant made to him by the landowner shall not be pre-emptible. This obviously is a prospective provision of law and will apply only after it was inserted in the amending Act. The second matter which sub-section (1) of section 17-A deals with is the interdict which is placed on executions of such decrees "passed after the commencement of this Act". This has a retrospective effect as the principal Act was enacted on 15th of April, 1953, and it is clearly provided that no decree for pre-emption obtained after 15th of April, 1953, can be executed in any Court of Law in respect of a sale of land comprising the tenancy of a tenant made to him and for which a pre-emption decree may have been obtained thereafter. The third matter in sub-section (2) of section 17-A concerns a situation where a tenant has actually been dispossessed of land sold to him in execution of a pre-emption decree after 15th of April, 1953. In such a case, the Legislature has provided that the dispossessed tenant will be entitled, if he so chooses, to purchase the land from the pre-emptor "on payment of the price paid to the tenant by the pre-emptor" or in the alternative, obtain restoration of the tenancy under the pre-emptor without becoming an owner.

What has happened in the present instance does not fall in any of the contingencies adumbrated in the amended section 17-A. Here the pre-emptor has obtained title to the land on 8th of May, 1958, and

Ganga Ram and others
v.
Shiv Lal

Shamsher Bahadur, J.

without seeking to dispossess the tenant he is wanting a declaration of his ownership. At first sight, it does appear strange that while a tenant who has been dispossessed can regain possession of the land under his tenancy, he should be denied the option to purchase the land though in actual possession of it as a tenant. A tenant in possession surely cannot be relegated to a position inferior to the one who has been dispossessed. The grant of a declaration which the plaintiff seeks would make it impossible for the tenants who are actually in possession of the land at the relevant period to obtain ownership of it from the pre-emptor. The Punjab Security of Land Tenures Act, 1953, is primarily designed to protect and safeguard the rights of the tenants especially with regard to the continuance of their tenancies. Though it does appear to be somewhat anomalous, on reflection I think there is no real conflict between the rights of the tenants which are protected under the Act and the declaration of title which the plaintiff seeks. As has been observed by my learned brother Mehar Singh, the plaintiff despite the grant of the declaratory decree would be able to secure the ejectment of the tenant only under the provisions of the Punjab Security of Land Tenures Act, and to that extent the protection given to the tenants respondents would continue to subsist. It is only the tenants option to purchase the demised land from the pre-emptor which would be affected but it has to be observed that the right given to a tenant under sub-section (2) of section 17-A must be kept within the statutory bounds which the Legislature has sought fit to impose. It may be a hard case for the tenants but it is for the Legislature to remedy that which apparently looks to be incongruous.

I would, in the result, concur with the answers which are proposed by Mehar Singh, J., to the two questions in the reference.

B.R.T.