

section 195(3) the matter would have been different, Kuldip Singh but as the High Court was neither the original Court nor the Court to which the original Court was subordinate, according to the special definition in section 195(3), it had no jurisdiction to make the complaint of its own authority. Therefore, all that the High Court could, and should, have done was to send the case to the District Judge for disposal according to law. We will, therefore, now do what the High Court should have done.

We were asked not to allow the proceedings to pend any longer but we are not prepared to do that in this case. If the view taken by Mr. Pitam Singh and the High Court is right, then a serious offence of a kind that is unfortunately becoming increasingly common, and which is difficult to bring home to an offender, has been committed against the administration of justice, and if the District Court is satisfied, as were Mr. Pitam Singh and the High Court, that a *prima facie* case has been made out and that it is expedient in the interests of justice that a complaint should be filed, then it is but right that the matter should be tried in the criminal Courts. We will not say anything more lest it prejudice the appellant. The District Judge will of course be free to exercise his own discretion. The application for the making of a complaint will accordingly be remitted to the District Judge who will now deal with it.

APPELLATE CIVIL.

Before Bishan Narain, J.

GAJAN SINGH AND NARAIN SINGH,—Defendants-  
Appellants.

versus

KARTAR SINGH AND MST. NIHAL KAUR AND OTHERS,—  
Respondents.

Regular Second Appeal No: 293 of 1953:

Pre-emption—Punjab Tenancy Act (XVI of 1887)—  
Section 56—Sale by occupancy tenants, without landlord's

v.  
The State of  
Punjab  
and another

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*permission—Sale pre-empted and possession taken over by the pre-emptor,—Landlords' sued the vendors and the pre-emptors in the revenue court under section 56 of the Punjab Tenancy Act, for setting aside the sale—Suit decreed and option given to occupancy tenants to get the land by making an application within two months—No such application made—The pre-emptors also did not execute the decree in their favour within 3 years—Suit by vendors against pre-emptors for possession on the ground that the transfer was invalid in law—Vendors, whether entitled to get a decree for possession.*

*Held, that the landlords abandoned their rights under the decree and were not in a position to enforce those rights on account of lapse of time. The vendors having failed to exercise the option under the decree had no right as the land by that decree had reverted to the landlords, Moreover, as the landlords have abandoned their rights under the decree by not enforcing it for all these years, the occupancy tenants and their transferees are regulated to their original contractual rights as if the landlords had not objected to the transfer at all.*

*Second Appeal from the decree of the Court of Shri Sunder Lal, Senior Sub-Judge, with enhanced appellate powers, Ferozepore, dated the 6th day of March, 1953, affirming that of Shri Ishar Singh, Sub-Judge, 1st Class, Fazilka, dated the 6th August, 1952, granting the plaintiffs a decree with costs for possession of the suit land against defendants Nos. 1 and 2 on payment of Rs. 600 less costs of the suit. The Lower Appellate Court allowed costs to the respondents of his Court.*

H. S. GUJRAL, for Appellants.

C. L. AGGARWAL, for Respondent No: 1, other by Nemo:

#### JUDGMENT

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J.

BISHAN NARAIN, J. Kartar Singh and other occupancy tenants of the land now in dispute sold their right to Pali Singh and two others on the 3rd of March, 1944, for Rs. 300. Thereupon Gajan Singh

and Narain Singh filed a suit on the basis of their superior right to pre-empt the sale and a decree for possession by pre-emption on payment of Rs. 600 was passed in their favour on the 4th of October, 1945. The pre-emptors duly obtained possession of the property. Then Mst. Dharam Kaur one of the landlords filed a suit against the occupancy tenants as well as the vendees and pre-emptors in a Revenue Court for possession on the ground that the sale was not binding on the landlords and on 7th August, 1947, obtained a decree and the portion of the judgment relevant in this litigation reads—

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“In view of the above discussion, I grant a decree for the possession of the land in dispute in favour of Mst. Dharam Kaur plaintiff against defendants Nos. 3 to 9 with costs cancelling the sale in dispute. If the occupancy tenants who are defendants Nos. 1 and 2 want to have the land back, they can do so by making an application within two months from the date of this order after which the land will revert to the plaintiff.”

There is no evidence that Mst. Dharam Kaur or any other landlord made any effort to execute the decree or to obtain possession of the land in dispute and it is admitted before me that now the pre-emptors are in possession of this land. The present suit was filed by the original vendors against the pre-emptors for possession of the land on the ground that the transfer was invalid in law. This suit was filed on the 7th of October, 1950, i.e., after the expiry of more than three years since the landlords had obtained a decree for possession. The defendants *inter-alia* pleaded that as neither the landlords nor the tenants had obtained possession under the decree their rights had been extinguished by flux of time and the decree had become

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inoperative. This defence did not find favour with the trial Court and the plaintiffs' suit was decreed on payment of Rs. 600. The defendants' appeal to the Senior Subordinate Judge, Ferozepore, also failed and they have come to this Court in second appeal.

The only question that requires decision in this appeal is whether the vendors are entitled to avoid the sale and demand possession from the pre-emptors after the landlords have obtained a decree cancelling the sale.

It is clear that section 56 of the Punjab Tenancy Act was enacted for the purpose of protecting landlords interests. The transfer of occupancy tenancy rights without the previous consent in writing of the landlord is not permitted by this section. If the landlord permits a transaction, then it is binding on him. Section 56, however, does not lay down that the transaction without the required consent is void, nor does it lay down that it is not binding on the parties to it. There is no doubt that even if such a transaction is effected without the previous consent of the landlord in writing then the transaction is valid between the occupancy tenant and his alienee provided that the landlord does not repudiate or attack it. In the present case the landlords did attack the transfer and obtain a decree for possession under certain conditions. Under the decree the tenants got an option to take the land back on the condition that they made an application for this relief within two months from the date of the order. This they failed to do and the land reverted to the landlords under the terms of the decree and the landlords became entitled to its possession. The landlords did not care to execute the decree and allowed the pre-emptors to remain in possession of the land for more than three years. The landlords have not yet claimed possession of this land. They have thus abandoned their

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rights that they obtained under the decree and they do not appear to be in a position now to enforce these rights on account of lapse of time. In the present litigation the original vendors are seeking to get possession of the land that they sold to the appellants as pre-emptors. They have not got the right under the decree as the land by that decree has reverted to the landlords. Moreover, as the landlords have abandoned their rights under the decree by not enforcing it for all these years, the occupancy tenants and their transferees are relegated to their original contractual rights as if the landlords had not objected to the transfer at all (*vide Ram Rakha v. Sant Ram and others* (1)).

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In this view of the matter it must be held that the plaintiffs have failed to substantiate their rights to get possession from their alienees.

The result is that this appeal succeeds and is accepted and the suit is dismissed with costs throughout.

#### SUPREME COURT

Before S. R. Das, C. J., N. H. Bhagwati, and T. L. Venkatarama Ayyar, JJ.

MESSRS. MELA RAM AND SONS,—Appellants.

*versus*

THE COMMISSIONER OF INCOME-TAX, PUNJAB,—  
Respondent.

Civil Appeal No: 17 of 1954.

*Income-tax Act (XI of 1922)—Sections 30(2), 31, 33—Appeal—Delay—Order of Appellate, Assistant Commissioner rejecting appeal as barred by time—Such an order, whether under section 31—Whether appeal lies to Appellate Tribunal—Section 31, construction of.*

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(1) A.I.R. 1930 Lah. 241.