

APPELLATE CIVIL

Before Harnam Singh J.

TEHOO RAM AND OTHERS,—Defendants-Appellants

versus

1952

DALIP SINGH minor, adopted son of TARIKHOO, through his real father Tega, respondent No. 2, (2), TEGHA, son of DHANNA,—Plaintiffs-Respondents. November 7th

Regular Second Appeal No. 271 of 1949.

Punjab Pre-emption Act (1 of 1913) Section 21-A—Improvement effected by a defendant vendee in his status after the institution of the suit for pre-emption—effect of on the suit—Sale of land to a number of persons— Shares and not the consideration specified—Sale whether divisible.

Held, that the vendees by jointing with themselves a stranger in the purchase are relegated to the position of the stranger and the sale by the stranger of his share to the other co-vendees after the date of the suit for pre-emption cannot defeat the suit in view of section 21-A of the Punjab Pre-emption Act.

Held further, that in a sale to a number of persons in the Punjab where there is specification of shares without specification of purchase price paid by the different vendees the sale cannot be held to be a divisible one.

Ghulam Qadir and another v. Ditta and others (1), and Tota Ram and others v. Kundan and others (2), followed, Ram Nath and others v. Badri Narain and others (3), not followed.

Second appeal from the decree of Shri Chhakan Lal, District Judge, Kangra at Hoshiarpur, dated the 22nd day of January, 1949, affirming that of Shri Gurbachan Singh, Sub-Judge, 1st Class, Kangra, dated the 4th March 1948, granting the plaintiff a decree for possession of land in dispute by pre-emption on payment of Rs 3,000 with costs of the suit against the defendants. The plaintiffs shall deposit into court the balance of Rs. 3,000 less the costs of the suit and the sum of Rs. 1,830 which is due to mortgagees for payment to defendants Nos. 2 to 6 on or before 4th May 1948 failing which this suit shall stand dismissed with costs.

K. C. NAYAR, for Appellants.

D. K. MAHAJAN, for Respondents.

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- (1) A.I.R. 1945 Lah. 184
 (2) A.I.R. 1928 Lah. 784
 (3) I.L.R. 19 All. 148

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JUDGMENT.

HARNAM SINGH, J. In order to appreciate the points of law arising in Regular Second Appeal No. 271 of 1949, the facts of the case may be set out in some detail.

On the 30th of January, 1947, Trikhu sold the land in suit to defendants Nos. 2 to 7 for rupees 3,000. On the 1st of January, 1947, Dalip Singh and Tega instituted civil suit No. 320 of 1947 for possession of the land in suit by pre-emption on payment of rupees 3,000.

Defendants Nos. 2 to 7 challenged the plaintiffs' right to pre-empt. In decreeing the suit the Court of first instance found that the plaintiffs had a superior right of pre-emption as against the vendees. Admittedly, Dalip Singh and Tega plaintiffs and defendants Nos. 2 to 6 are collaterals of Trikhu in equal degree. Sunkoo, Defendant No. 7 was a stranger and defendants Nos. 2 to 6 having associated with them Sunkoo sank to the level of Sunkoo on the date of the sale.

From the decree passed by the Court of first instance on the 4th of March, 1948, defendants appealed.

In the appellate proceedings the sole point that arose for decision was whether the plaintiffs had a superior right of pre-emption as against the vendees.

In deciding the appeal the Court found that the plaintiffs had a right of pre-emption superior to the vendees. In the result the appeal failed and was dismissed with costs.

From the decree passed in appeal the defendants have come up in further appeal to this Court under section 100 of the Code of Civil Procedure.

In arguments Mr. K. C. Nayar pointed out that Sunkoo defendant No. 7 who was a stranger on the date of sale sold the property purchased by

him to defendants Nos. 2 to 6 on the 3rd of February 1948. As stated above, civil suit No. 320 of 1947 was instituted on the 1st of July, 1947. Defendants Nos. 2 to 6 having associated with them Sunkoo sank to the level of Sunkoo on the date of the sale. The question is whether they can be permitted to improve their status by the sale made in their favour on the 3rd of February 1948.

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Section 21A of the Punjab Pre-emption Act provides—

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

In my judgment, the improvement made in the status of defendants Nos. 2 to 6 after the institution of the suit for pre-emption cannot affect the right of the pre-emptors in that suit. For authority on this point, *Tej Ram and others v. Puran Chand and others*, (1) decided on the 16th of April, 1951, may be seen.

But it is said that the sale was divisible inasmuch as the share of Sunkoo was specified in the sale deed, Exhibit D. 2.

In the sale deed, Exhibit D. 2, the share of Sunkoo in the land purchased was specified, but the purchase money which was to be paid by Sunkoo was not specified. In *Ghulam Qadir and another v. Ditta and others* (2), Abdur Rahman J. (Harries C. J. and Abdul Rashid J. concurring) said—

“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 and it was open to the vendor to

(1) L.P.A. 76 of 1949

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

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call upon all the intending purchasers to perform their contract jointly and to recover the whole of the price from any one of them. Specification of shares in such a case could not make such a contract of the sale to be divisible or to consist of a number of transactions embodied in a single document. The position might have been materially different if the price of all the specified shares had also been separately fixed and the vendor would have been bound to recover the price mentioned for each share from each vendee separately."

Indisputably, the present case falls within the rule laid down in *Ghulam Qadir and another v. Ditta and others* (1).

Basing himself upon *Ram Nath and others v. Badri Narain and others* (2), Mr. K. C. Nayar urges that the specification of shares without specification of the purchase price paid by the different vendees makes the sale to be divisible for purposes of pre-emption.

Clearly, I.L.R. 19 All. 148 supports the argument raised by the appellants in the present case. In *Tota Ram and others v. Kundan and others* (3), Shadi Lal, C. J. (Johnstone, J. concurring) pointed out that the view taken by the Allahabad High Court that specification of shares without specification of the purchase price paid by the different vendees makes the transaction a divisible one has not been adopted by the Punjab Courts. In deciding the point raised I prefer to rely upon *Ghulam Qadir and another v. Ditta and others* F.B. (1).

No other point arises in these proceedings.

In the result I dismiss with costs Regular Second Appeal No. 271 of 1949.

(1) A.I.R. 1945 Lah. 184
(2) I.L.R. 19 All. 148
(3) A.I.R. 1938 Lah. 784