down that a gift of one-fourth of the husband's estate by a widow should be regarded as a gift of a small or a moderate portion of such estate. That being so, I find that the gift in suit was a gift of a reasonable and moderate portion of the ancestral land held by Ghansara.

Kirlu, son of Kharku and two others, *v.* Mst. Kishan Dai, wife of Baj and another, Harnam Singh J.

No other point was pressed before me.

For the foregoing reasons, the appeal fails and is dismissed with costs.

APPELLATE CIVIL

Before Harnam Singh, J.

FAUJA SINGH AND OTHERS,—*Defendants-Appellants,*

versus

CHANAN SINGH AND OTHERS (PLAINTIFFS) SOHNU AND ANOTHER (DEFENDANTS),—*Respondents.*

1950

June 22nd

Regular Second Appeal No. 595 of 1948.

Punjab Pre-emption Act (I of 1913) as amended by Act II of 1928 and Act I of 1944—Section 15(c) secondly—Village Bhumli, Tahsil and District Gurdaspur—Whether comprises recognised sub-divisions within the meaning of section 15(c) secondly of the Act.

Section 15(c), secondly provides that the right of pre-emption vests in the owners of the *pattis* or sub-divisions of the estate within the limits of which such land or property is situate, if no person having a right of pre-emption under clause (a) or clause (b) of section 15 seeks to exercise that right.

A particular town or city may or may not, as a matter of fact, comprise recognised sub-divisions and it is a matter of fact both whether the town or city comprises sub-divisions and what the sub-divisions are which are comprised in it.

Held that village Bhumli is divided into recognised *pattis* or sub-divisions within the meaning of section 15(c) secondly of the Punjab Pre-emption Act and that *taraf* Bakhtu is a distinct sub-division of the village and that the plaintiffs being owners in that sub-division in which the

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land in dispute is situated possess a preferential right of pre-emption as compared with defendants.

Nanni Mal v. *Shiv Nath* (1), *Ram Partap* v. *Kishan Singh* (2), relied upon.

Second Appeal from the decree of Shri T. C. Sethi, District Judge, Gurdaspur, dated the 23rd day of June 1948, reversing that of Shri B. L. Malhotra, Subordinate Judge, 1st Class, Gurdaspur, dated the 20th December 1947, and granting the plaintiffs a decree for possession of the land in suit by pre-emption against the defendants on the condition that they shall deposit for the vendees in the trial Court the sum of Rs. 10,000 (less the amount, if any already deposited by them) within three months, failing which this suit shall stand dismissed with costs and further ordering that in case they deposit the amount in time, the parties shall bear their own costs.

SHAMAIR CHAND, for Appellants.

DAYA KRISHAN MAHAJAN and PARTAP SINGH, *for* Respondents.

JUDGMENT

Harnam Singh J.

HARNAM SINGH J. On the 3rd of March 1947, Chanan Singh and others instituted the suit out of which this appeal has arisen for possession by pre-emption of the suit land measuring 46 *kanals* 4 *marlas* sold by Sohnun *alias* Sohan Singh, defendant No. 6 to Fauja Singh and others, defendants Nos. 1 to 5, for Rs. 10,000 on the foot of the registered sale-deed executed on the 18th of February 1946. Plaintiffs pleaded that they possessed a superior right of pre-emption as compared with defendants Nos. 1 to 5 and that Rs 6,000 represented the actual sale price and the true market value of the land.

Defendants Nos. 1 to 5 resisted the suit and on the pleadings of the parties the following issues arose :—

(1) Have the plaintiffs a superior right of pre-emption *qua* the vendees ?

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(1) 64 P. R. 1887.
(2) 1937 A.I.R. (Lah.) 32.

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(2) Whether the ostensible sale price Rs. 10,000 was fixed in good faith and paid ?

(3) What is the market value of the land in suit ?

(4) Relief.

At the trial the plaintiffs expressed their willingness to pay the entire sale price as pre-emption money to the vendees. That being so, issues Nos. 2 and 3 did not call for any decision in the trial Court and the sole question that was debated at the trial was whether the plaintiffs had a superior right of pre-emption *qua* the vendees. Finding issue No. 1 against the plaintiffs the trial Court dismissed the suit leaving the parties to bear their own costs.

From the decree passed by the trial Court on the 20th of December 1947 plaintiffs went up in appeal in the Court of the District Judge, Gurdaspur, and the lower appellate Court has found that the plaintiffs possess a superior right of pre-emption as compared with defendants Nos. 1 to 5 on the ground that the plaintiffs were owners in the sub-division in which the land is situate while the vendees were not the owners in that sub-division of the village.

From the decree passed by the District Judge in appeal defendants Nos. 1 to 5 have come up in further appeal to this Court under section 100 of the Code of Civil Procedure, 1908.

Mr. Shamair Chand, learned counsel for the appellants, contends that there are no recognised subdivisions or *pattis* for purposes of pre-emption in village Bhumbli, District Gurdaspur.

Section 15 (*c*) secondly provides that the right of pre-emption vests in the owners of the *pattis* or subdivisions of the estate within the limits of which such land or property is situate, if no person having a right of pre-emption under clause (*a*) or clause (*b*) of section 15 seeks to exercise that right.

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Now, I think that the question whether a particular village comprises recognised sub-division is a question of fact and is not open to challenge in second appeal. In *Nanni Mal* v. *Shiv Nath* (1), Plowden, J., said :

> " Now, it is clear that a particular town or city may or may not as a matter of fact comprise recognised sub-division, and I entertain no doubt that it is a matter of fact, both whether the town or city comprises sub-divisions, and what the sub-divisions are which are comprised in it. "

Clearly, if the proposition laid down by Plowden, J., in *Nanni Mal* v. *Shiv Nath* (1) is correct in the case of a town, I do not think any reason that this should not be so in the case of a village. That being so, I find that it is not open to Mr. Shamair Chand to contend in these proceedings that village Bhumbli in the Tahsil of Gurdaspur is not divided into recognised *pattis* or sub-divisions within the meaning of section 15 (*c*) secondly, Punjab Pre-emption Act, 1930.

Mr. Shamair Chand, however, urges that the finding that Village Bhumbli is divided into recognised *pattis* or sub-divisions within the meaning of section 15 (*c*) secondly of the Act does not proceed upon the consideration of the entire evidence and is liable to challenge in second appeal. On a perusal of the record I, however, see no merits in the point raised.

Mr. Shamair Chand points out that the lower appellate Court was in error in finding that there was no *shamilat* attached to Village Bhumbli and that each *taraf* had its own *shamilat*. He then points out that in fact the fields of one *taraf* are intermingled with the fileds of the other *taraf* and that there is no homogeneity of descent in *taraf* Bakhtu where the land in suit is situate.

(1) 64 P. R. 1887.

Now, the *tarafs* to be distinct sub-divisions must be distinct entities having nothing in common between them each having homogeneity of area and descent. In *Ram Partap* v. *Kishan Singh* (1), Tek Chand, J., said :

> "It is no doubt that in the Settlement papers the two *pattis* are mentioned and there are separate *lambardars* for them. But these facts are by no means conclusive on the point. The number of *lambardars* appointed in a village, or the sub-division thereof, is a matter of administrative convenience, depending on a variety of considerations. In some places a single *lambardar* is considered sufficient for a whole village ; in others several *lambardars* are appointed for one sub-division. The real question is whether *Patti* Gurmukh Singh and *Patti* Gulab Singh are distinct entities having nothing in common between them, each having homogeneity of area or descent."

On a perusal of the evidence I find the following facts stand established on the record :

(1) Sub-divisions or *tarafs* are recognised in the Settlement records and existed even before 1865 in Bhumbli village ;

(2) *Taraf* Bakhtu in which the land in suit is situate was founded after the name of the common ancestor, Bakhtu, showing that *tarafs* of Village Bhumbli were not created for fiscal purposes but were founded by different proprietors and named after them ;

(3) Exhibits D. 3 to D. 7 show that in some cases there is joint *shamilat* of two *tarafs* but in all cases ownership follows the *tarafs*, each *taraf* being an equal share.

(1) 1937 A.I.R. (Lah.) 32.

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with the other and there is no *shamilat* attached to the village ;

(4) there is homogeneity of descent in *taraf* Bakhtu in that the common descendants of Bakhtu are the sole proprietors with a share in the *shamilat* of *taraf* Bakhtu ; in 1865 Sudh Singh, son of Jai Singh, ancestor of the vendor, was recognised *malik qabiz* of a small piece of land in *taraf* Bakhtu, but as stated above *tarafs* existed and were recognised before that Settlement and there have been no fresh inroads into the homogeneity of *tarafs* by the introduction of strangers in the *taraf* after 1865 ;

(5) the *tarafs* in Village Bhumbli are based on the *chak bat* system as opposed to the *khet bat* system ; the term *chak bat* is applied to a *patti* or sub-division of an estate which has all its land lying in one block as opposed to *khet bat* which applies to a *patti* or sub-division of an estate all the land whereof does not lie in a single block ; the *kafiat dehi* of 1865 expressly provides that *tarafs* of Village Bhumbli have no connection or concern with each other ;

(6) the tenure of the village is *pattidari* showing that in Village Bhumbli land is divided and held in severalty by the different proprietors according to ancestral or other customary shares ; and

(7) the land revenue according to the *kafiat dehi* is assessed on *tarafs* according to the area comprised in each *taraf*, though within the *taraf* it is payable by the proprietors according to their shares.

Applying the rule laid down in *Ram Partap* v. *Kishan Singh* (1) to the facts of this case, I find that

(1) 1937 A.I.R. (Lah.) 32.

taraf Bakhtu is a distinct sub-division of Village Bhumbli and that the plaintiffs possess a preferential right of pre-emption as compared with defendants Nos. 1 to 5.

No other point arises in these proceedings.

For the foregoing reasons the appeal fails and is dismissed with costs.

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Harnam Singh J.

REVISIONAL CIVIL

Before Harnam Singh, J.

Shrimati ANGURI DEVI,—*Plaintiff-Petitioner,*

versus

GURNAM SINGH,—*Defendant-Respondent.*

1950

July 4th

Civil Revision No. 375 of 1949.

Civil Procedure Code (Act V of 1908), section 115—An order demanding additional Court fee—Whether subject to revision under section 115 of the Code of Civil Procedure—Suit for declaration that plaintiff is tenant of the shops in suit and for possession of the shop—Whether falls under section 7 (v) (e) or section 7 (iv) (c) of the Court-fees Act, (VII of 1870)—Distinction between the two clauses of the section.

Held that an order demanding additional Court-fee is subject to revision under section 115 of the Code of Civil Procedure as in a case like this there is a refusal to exercise jurisdiction in the matter and to try the case on the merits unless additional Court-fee is paid.

Bal Krishana Udayar v. *Vasudev Ayyar* (1), distinguished.

The present suit for declaration that plaintiff was a tenant in respect of the shops in suit and for possession of the shops on the allegation that defendant had unlawfully and forcibly taken possession thereof fell under section 7(*v*) (*e*) of the Court Fees Act and not under section 7(*iv*) (c) of the Act and, therefore, *ad valoram* Court-fee was payable.

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(1) 1917 A.I.R. (P. C.) 71.