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the property. In the present case, the plaintiff had not been informed or given notice of the liability of the property given to him being subject to a loss to him because of another person's right of pre-emption, under which right the latter could obtain possession of the property thus depriving the plaintiff of the same. This was, therefore, a defect in title to the land of the defendants given by them to the plaintiff, who, in exercise of his own right of pre-emption, was entitled to have the land pre-empted by him free from any such defect and, on consolidation of holdings, to have the land allotted in repartition in lieu of the land pre-empted by him. Instead of giving him land which had been obtained by the defendants in lieu of the land pre-empted by the plaintiff and free from any further liability of purchase by somebody else in exercise of his right of pre-emption, the plaintiff was given by the defendants land which was in fact liable to such a defect, and, in consequence, the plaintiff came to lose the possession of the land thus given to him by the defendants. In the circumstances the decision of the learned Single Judge is not open to exception.

(8) In the result, this appeal fails and is dismissed with costs.

RANJIT SINGH SARKARIA, J.—I agree.

K.S.K.

APPELLATE CIVIL.

*Before Prem Chand Pandit, J.*

KARTAR SINGH AND ANOTHER,—*Appellants.*

*versus*

AJMER SINGH AND ANOTHER,—*Respondents.*

**Second Appeal From Order No. 79 of 1968**

February 18, 1969.

*Punjab Pre-emption Act (I of 1913)—Section 22—Misapprehension on the part of a pre-emptor regarding the date of deposit of 1/5th of the value of the property to be pre-empted—Pre-emptor applying for extension of time—Trial Court rejecting the plaint for non-deposit without passing separate order on the application—Appellate Court extending time for deposit—Such Court—Whether acts illegally.*

*Held*, that an appellate Court can at any time exercise the powers conferred on the trial Court under sub-section (1) of section 22 of Punjab Pre-emption Act 1913. It can also extend the time for the deposit of 1/5th of the probable value of the property sought to be pre-empted. It is only when the plaintiff-pre-emptor fails to make the required deposit either within the original time fixed or within the extended time allowed by the

Court that his plaint is liable to be rejected. Where there is genuine misapprehension on the part of a pre-emptor with regard to the date by which the aforesaid deposit is to be made and he applies for extension of the time for such deposit but the trial Court rejects his plaint without passing a separate order on his application, the District Judge on appeal does not act illegally or with irregularity in the exercise of his discretion in extending the period for making the deposit of 1/5th of the value of the property to be pre-empted. (Para 6)

*Second Appeal from order of the Court of Shri Muni Lal Verma, District Judge, Bhatinda, dated 13th August, 1968, reversing that of Shri Pawan Kumar Garg, Additional Sub-Judge, II Class, Mansa, dated 2nd June, 1967, allowing this appeal and setting aside the impugned order and remanding the case back to the Court of Sub-Judge, First Class, (B), presided by Shri H. C. Modi, at Mansa, by way of transfer because the Court, which passed the impugned order had ceased to exist.*

MRS. SURJIT BINDRA, ADVOCATE, FOR B. S. KHOJI, ADVOCATE.

HARBANS LAL, ADVOCATE, FOR Respondent No. 1.

#### JUDGMENT

Pandit, J.—This order will dispose of two connected Second Appeals from Order Nos. 79 and 82 of 1968, in which identical questions arise for decision. It has been conceded by the learned counsel for the parties that the decision in the former case will govern the latter as well. I will, therefore, refer to the facts of S.A.O. No. 79 of 1968.

(2) On the 13th of May, 1966, by a registered deed, Kundha Singh sold some agricultural land to Kartar Singh and his brother Bahal Singh for Rs. 5,000. On 9th of May, 1967, Ajmer Singh brought a suit for possession of the said land by pre-emption on the ground that he was the son of the vendor. On 11th of May, 1967, the trial Court passed the following order in the presence of the counsel for the plaintiff:—

“Defendants be summoned on payment of process fee. 1/5th of sale price be deposited before the next date. To come up on 2nd June, 1967.”

On 2nd of June, 1967, Ajmer Singh made an application to the trial Court stating that the Court had ordered the deposit of 1/5th of the sale price by 2nd of June, 1967. It was difficult for the applicant to deposit 1/5th of the sale price of Rs. 5,000 and he might, therefore, be allowed to furnish security for the said amount instead. On the same date, without passing any formal order on the

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plaintiff's application, the trial Judge rejected the plaint under section 22(4) of the Punjab Pre-emption Act, 1913, hereinafter called the Act, observing as under:—

“In this suit the plaintiff was directed on the last date of hearing, i.e., on 11th May, 1967 to deposit the 1/5th of the sale price before the next date i.e. today. Today the plaintiff has filed an application praying permission to furnish security instead of cash payment. Firstly, this application is time-barred, because the plaintiff was required to deposit the 1/5th amount before today. Secondly, as held in A.I.R. 1938 Lahore 452, the choice made in favour of either cash or security cannot later on be changed to the other. Thirdly, no grounds are shown in the application why the deposits could not be made in time. Therefore, the plaintiff having failed to deposit the Zare-Panjam within the permitted time, the plaint is rejected under section 22(4) of the Punjab Pre-emption Act.”

(3) Against this order, the plaintiff went in appeal before the learned District Judge, Bhatinda. He was of the view that the order passed by the trial Judge on 11th of May, 1967, was not strictly in accordance with the provisions of section 22(1), inasmuch neither the exact amount nor the definite date by which it had to be deposited by the pre-emptor was mentioned in that order. He was further of the view that the trial Judge should have decided the application made by the pre-emptor on 2nd of June, 1967, because if the same had been rejected, the pre-emptor could have applied for the extension of time for making the deposit of the amount or he might have offered the amount of Rs. 1,000 for deposit, and in that case, the trial Court might or might not have extended the time for the deposit or agreed with the pre-emptor that he was to deposit the said amount on or before 2nd of June, 1967. Since the trial Court did not decide the pre-emptor's application, that, according to the learned Judge, had caused prejudice to him. As, in the view of the learned Judge, the appellate Court could extend the period for making deposit of 1/5th of the probable value, he gave an opportunity to the pre-emptor to deposit the said amount within ten days from the day he decided the appeal. As a result of these findings, he accepted the appeal on 13th of August, 1968, set aside the order of the trial Court and sent the case back directing the pre-emptor to deposit Rs. 1,000, as 1/5th of the probable value of the land; on or before 23rd of August, 1968. If he did that; the trial Judge would proceed to decide

the case on merits. In case of default by the pre-emptor, the consequences as contemplated by section 22(4) of the Act would follow. Against this order; the present second appeal has been filed by the vendees Kartar Singh and his brother Bahal Singh.

(4) Counsel for the appellants submitted that the learned District Judge was in error in extending the time for the deposit of the 1/5th amount on the pre-emptor's application dated 2nd of June, 1967; because firstly; the said application had been filed beyond limitation, and, secondly no prayer had been made therein for the extension of time for making the deposit. The relief claimed was that the pre-emptor might be allowed to furnish security for the said amount instead of making deposit of the same.

(5) After hearing the counsel for the parties; I am of the opinion that there is no merit in this appeal. It is not contended by the counsel for the appellants that the learned District Judge had no jurisdiction to extend the time for making the deposit of 1/5th of the sale price by the pre-emptor. The grievance was that in the exercise of that discretion, the learned Judge had acted in an illegal manner, because of the abovementioned two grounds. It appears that the pre-emptor was under a bona fide misapprehension that the 1/5th of the sale price had to be deposited on or before the 2nd of June, 1967. This was what he had stated in the application that he made on 2nd of June, 1967; before the trial Court. This precisely was his position before the lower appellate Court as well. It was because of this very misapprehension that he made the application on 2nd of June, 1967, and not earlier. That also explains as to why he did not apply for the extension of time for the deposit of the amount and merely prayed for permission to furnish security for the required amount. The relevant part of section 22 of the Act reads as under :—

“(1) In every suit for pre-emption the Court shall at, or at any time before the settlement of issues, require the plaintiff to deposit in the Court such sum as does not, in the opinion of the Court, exceed one fifth of the probable value of the land or property, or require, the plaintiff to give security to the satisfaction of the Court for payment, if required, of a sum not exceeding such probable value within such time as the Court may fix in such order.

(2) In any appeal the Appellate Court may at any time exercise the powers conferred on a Court under sub-section (1).

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(3) — — — — —

(4) If the plaintiff fails within the time fixed by the Court or within such further time as the Court may allow to make the deposit or furnish the security mentioned in sub-section (1) or (2), his plaint shall be rejected or his appeal dismissed, as the case may be.

(5) — — — — —

(6) — — — — —”

(6) A combined reading of these provisions would show that an appellate Court can at any time exercise the powers conferred on the trial Court under sub-section (1). It can also extend the time for the deposit of 1/5th of the probable value of the land. It is only when the plaintiff fails to make the required deposit either within the original time fixed or within the extended time allowed by the Court that his plaint shall be rejected or his appeal dismissed as the case may be. Once it is conceded that the appellate Court can extend the time for making the deposit, as has been frankly done by the learned counsel for the appellants, the order, under appeal in the instant case; cannot be reversed, because it cannot be said that the learned District Judge had acted in the exercise of his discretion in an arbitrary or perverse manner. There was genuine mis-apprehension on the part of the pre-emptor with regard to the date by which the deposit had to be made. In the order passed by the trial Judge on 11th of May, 1967, unfortunately; it had not been clearly mentioned as to what amount and by which specific date the same had to be deposited by the pre-emptor. As I have said, it is due to that very misapprehension that he made the application on 2nd of June, 1967, and did not ask for extension of time for making the deposit. If the trial Court had rejected the application and told the pre-emptor the reasons for doing so, he might have, as pointed out by the learned District Judge; offered the amount of Rs. 1,000 for deposit or made an application for the extension of time for the said deposit. The Court could have either extended the time or refused to do so or might have accepted the amount offered by him. Unfortunately, the trial Judge straightway rejected the plaint. In the order, though he did mention the reasons, but he did not actually reject the application made by the pre-emptor. No separate order on the application also had been passed by the learned Judge. There was thus no opportunity given to the pre-emptor to either deposit the amount on that day or apply for extension for making the said deposit.

Under these circumstances, it could be said that the learned District Judge had in any way acted illegally or with irregularity in the exercise of his discretion in extending the period for making the deposit of the 1/5th of the probable value of the land.

In *Mohammed Ahmed and another v. Aziz-ur-Rehman* (1), it was held thus:

“Under section 22(4) the discretion allowed to the Court in relation to extension of time is absolute and unqualified. There is nothing to justify an interpretation of section 22(4) which would restrict the exercise of the discretionary power thereby conferred in regard to extension of time to cases of rare or extreme kind. :

Where, therefore, in a suit for pre-emption the failure of the Court to fix a definite date on or before which the deposit was to be made misled the plaintiff and on this ground the Court granted extension of time to the plaintiff for depositing the sum required by section 22.

Held that (1) the extension granted by the Court was strictly within its powers. (2) The point was so clear as to require no evidence other than the Court's own order to prove that the plaintiff was misled.”

In the abovementioned case, it is pertinent to mention, that although the Court had ordered on 1st May, 1945 that the deposit should be made within 10 days, it was not till 19th of May, 1945. that an application for extension of time was made.

(8) Similarly, Abdul Rashid, J., in *Mehr Mohammad Din v. Pandit Anant Ram and another* (2), observed—

“In a suit for pre-emption, the Court ordered that one-fifth of the price should be deposited before ‘*peshi kham*’. The deposit was not made before ‘*peshi kham*’ and, therefore, the Judge rejected the plaint immediately. Held that the plaintiff was under a *bona fide* misapprehension as to the date before which he had to deposit 1/5th of the price in Court. Instead of recording that 1/5th of the price should be paid before ‘*peshi kham*’, the Court ought to have

(1) A.I.R. 1947 Lah. 72.

(2) A.I.R. 1939 Lah. 25.

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mentioned a particular day for the deposit of the price. The phraseology of the Court left room for mis-apprehension:

Held further that when deposit was not made the Court ought not to have rejected the plaint immediately. The Court ought to have considered whether the circumstances were such as to justify an extension of time for the deposit of 1/5th of the price."

A Division Bench of the Lahore High Court in *Ram Rattan v. Rajaram* (3), was of the view :

"The phrase "his plaint shall be 'rejected' "read with the provision as to an extension of time means that the plaint shall be rejected if the Court should not deem it proper to allow further time and though the Court may not extend time *suo motu* it should, not all the same, act with such clarity in rejecting the plaint as not to allow the plaintiff even a moment for reflection or action."

(9) In view of what I have said above, both the appeals (S.A.Os Nos. 79 and 82 of 1968) fail and are dismissed. In the circumstances of this case, however, I leave the parties to bear their own costs in this Court.

K.S.K.

REVISIONAL CIVIL

Before Shamsher Bahadur and R. S. Narula, JJ.  
Puran Chand ..... Petitioner.

Versus.

Mangal ..... Respondent.

Civil Revision No. 187 of 1968.

February 25, 1969.

*East Punjab Urban Rent Restriction Act (III of 1949)—Section 9 and 13(2) (i)—Proviso to section 13(2) (i)—Purpose of — Stated — Interest on arrears or rent payable by the tenant under the proviso — Whether to be calculated upto the date of the first hearing of the ejectment proceedings—Section 9 — Whether makes the payment of house-tax a liability of the tenant — Land-lord not exercising statutory option to increase rent by adding*

(3) A.I.R. 1923 Lah. 643.