

Before : A. L. Bahri, J.

KEWAL KRISHAN AND OTHERS,—*Petitioners.*

versus

JARNAIL SINGH AND OTHERS,—*Respondents.*

Civil Revision No. 3419 of 1990

5th March, 1991.

(1) *Punjab Pre-emption Act, 1913—S. 28-A—Plaintiffs filed two suits for pre-emption—In second suit defendant filed application u/s 28-A of Pre-emption Act for staying proceedings in earlier suit—Only a plaintiff can file application u/s 28-A whose claim is based on right of pre-emption derived from ownership—Right not available to defendant.*

Held, that a close scrutiny of Section 28-A would reveal that an application under this provision is contemplated to be filed by the plaintiff whose claim is based on a right of pre-emption derived from ownership of land. The same analogy cannot be applied to the plea of the defendant that on one or the other ground being common the plaintiffs earlier instituted suit be stayed.

(Para 3)

(2) *Code of Civil Procedure, 1908 (V of 1908)—S. 10—Attracted only when matter in issue is directly or substantially in both suits is same—One issue cannot be treated as matter in issue—Suit cannot be stayed on one issue being common in both suits.*

Held, that S. 10 of the Code of Civil Procedure is attracted when matter in issue is directly or substantially in the two suits is the same. One of the issues cannot be treated as matter in issue.

(Para 4)

Petition u/s 115 C.P.C. for revision of the Order of the Court of Shri Sanjiv Kumar, HCS, Sub Judge 3rd Class, Karnal, dated 26th November, 1990, accepting the application under Order 28-A of the Punjab Pre-emption Act filed by the vendee/applicants Defendants No. 1 to 3, staying the proceedings in the main case are stayed till the decision of the earlier suit No. 520 of 1990 regarding 4 Kanals of land and there will be no order as to costs.

Claim : Suit for possession by way of pre-emption. Application under section 28-A of the Punjab Pre-emption Act has been filed on behalf of the defendant No. 1 to 3/vendees/applicant.

Kewal Krishan and others v. Jarnail Singh and others
(A. L. Bahri, J.)

Claim in Revision : For reversal of the order of the Lower Court.
C.M. No. 904-CII of 1991

Application under Section 151 C.P.C. praying that application be allowed defendant-respondents be restrained from digging and removing the earth from the land in dispute and changing the nature of land.

C. B. Goel, Advocate, R. C. Chauhan, Advocate with him, for the Petitioners.

S. S. Rathore, Advocate, for the Respondents.

JUDGMENT

A. L. Bahri, J.

(1) This revision petition is directed against order dated November 26, 1990, passed by Sub Judge 3rd Class Karnal, allowing application filed under Section 28-A of the Punjab Pre-emption Act and staying proceedings in the civil suit No. 520 of 1990 regarding four Kanals of land, earlier filed.

(2) Two suits for pre-emption were filed relating to different parcels of land sold to the same vendee by the same pre-emptor. Civil suit No. 520 of 1990 relates to 4 kanals of land which was sold on May 11, 1990 Civil Suit No. 521 of 1990 relates to 66 Kanals of land sold on May 18, 1990. The suits for pre-emption have been filed by the plaintiffs claiming to be co-sharers in the joint khata. It was in the latter suit that application under section 28-A of the Pre-emption Act was filed by the defendants for staying the proceedings in the earlier instituted suit.

"28-A. Postponement of decision of pre-emption suit in certain cases.—(1) If, in any suit for pre-emption, any person bases a claim or plea on a right of pre-emption derived from the ownership of agricultural land or other immovable property, and the title to such land or property is liable to be defeated by the enforcement of a right of pre-emption with respect to it, the court shall not decide the claim or plea until the period of limitation for the enforcement of such right of pre-emption has expired and the suits for pre-emption, if any, instituted with respect to the land or property during the period have been finally decided.

(2) If the ownership of agricultural land or other immovable property is lost by the enforcement of a right of pre-emption, the court shall disallow the claim or plea based upon the right of pre-emption derived therefrom."

(3) The close scrutiny of the aforesaid provision would reveal that an application under this provision is contemplated to be filed by the plaintiff whose claim is based on a right of pre-emption derived from the ownership of land. If such a right was defeated in another suit, the proceedings in the earlier instituted suit could be stayed if the decision was to be dependent on decision of such a suit. The trial Court relied upon the decision of this Court in *Indraj v. Ami Lal and others* (1) wherein proceedings were stayed on the application filed by the plaintiff. After noticing the aforesaid decision the trial Court observed that even if defendant had filed such an application, the ratio of the decision could be followed. This approach is not correct. As already stated above, Section 28-A of the Act only contemplates an application to be filed by the plaintiff on fulfilment of certain requirements relating to his claim to the right of pre-emption. The same analogy cannot be applied to the plea of the defendant that on one or the other ground being common the plaintiffs' earlier instituted suit should be stayed.

(4) Finally learned counsel for the respondent has relied upon Section 10 of the Code of Civil Procedure that even if the provision of Section 28-A of the Pre-emption Act were not applicable the power to stay the proceedings existed in the Court under Section 10 of the Code of Civil Procedure as one of the points arising in both the suits is common though the subject matter is different. The aforesaid common question is stated to be relating to the right of the plaintiffs to claim pre-emption being co-sharers. It is further argued that issue in both the suits would be as to whether the plaintiffs are co-sharers in the joint *Khata* or not. Since one of the issues would be common, one of the suits could be stayed. I am afraid, again this contention cannot be accepted. Section 10 of the Code of Civil Procedure is attracted when matter in issue indirectly or substantially in the two suits is the same. One of the issues cannot be treated as matter in issue. In *Shri Mohun Lal Thapar v. Messrs Sard Ispat Udyog Chhehrata* (2), the question was about the applicability of Section 10 of the Code of Civil Procedure

(1) 1988 P.J.J. 268.

(2) 1973 P.L.R. 443.

Bank of India v. Presiding Officer, Central Government Industrial
Tribunal-cum-Labour Court, Chandigarh and others
(M. R. Agnihotri, J.)

in two suits for recovery of rent for different period between the same parties. It was held that subsequent suit filed for recovery of rent for the different period was not liable to be stayed under section 10 of the Code of Civil Procedure, as the matter in issue would not be the same.

(5) For the reasons recorded above, this revision petition is accepted. The impugned order is set aside. However there will be no order as to costs. Parties through their counsel are directed to appear in the trial Court on March 25, 1991. No order in C.M. is necessary stand disposed of.

J.S.T.

Before : M. R. Agnihotri, J.

BANK OF INDIA,—*Petitioner.*

versus

PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH AND
OTHERS,—*Respondents.*

Civil Writ Petition No. 3148 of 1987.

11th March, 1991.

Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976—Bank of India (Officers') Service Regulation, 1979—Banking Companies (Acquisition and transfer of undertaking) Act, 1970—S. 19—Termination—Reinstatement—General Manager designated as appointing authority of Staff Officer under 1976 Regulations—Order of termination passed by subordinate authority i.e. Zonal Manager is invalid—Workman entitled to reinstatement with full back wages—Bank cannot be permitted to have fresh order of termination passed by the competent authority at this stage—Defect is incurable.

Held, that for safeguarding the interests of the workmen and other employees of various corporate bodies and public undertakings against the arbitrary and illegal actions of the employer, the applicability of the provisions of Article 311 of the Constitution is not necessary. It is not Article 311 of the Constitution alone, which prohibits dismissal or removal of an employee by an authority subordinate to the appointing authority. On the other hand, with the