

Dharam Chand etc. *vs.* Ram Chand etc. (Hon'ble C.J.)

obtain permits on its Distillery does not mean that there is a contract between the Distillery and the purchaser in the matter of sale of liquor. It is still open to the authorities not to give a permit on a particular Distillery. The learned counsel for the State could only draw our attention to the Punjab Liquor Permit and Pass Rules, 1932 and Form L-32 which leaves the total quantity of full strength and Variety, sizes, grades and strength to the discretion of the permit-holder, but that does not bring about a contract between the permit-holder and the Distillery. The Distillery is bound to supply the liquor mentioned in the permit. In our opinion, this case is more or less analogous to the case that was before their Lordships of the Supreme Court in *Chittar Mal Narain Das's case* (7).

(13) For the reasons recorded above, we answer the third and the fourth questions in the negative, namely that there is no sale of liquor and consequently of the packing material, that is, the bottle.

**Question No. 5:**

(14) This question was not pressed by the learned counsel for the assessee. We answer this question in the affirmative, that is, in favour of the Department and against the assessee.

(15) The net result, therefore, is that the first question is answered against the Department with regard to the assessments for the years 1956-57 and 1957-58, and in its favour for the assessment year 1958-59. The second question is answered in favour of the Department but its answer would be of no material consequence in view of our answer to questions 3 and 4. Those questions have been answered against the Department. Question No. 5 has been answered in favour of the Department. In the circumstances of the case, there will be no order as to costs.

K.S.K.

REVISIONAL CIVIL

*Before Harbans Singh, C.J.*

DHARAM CHAND, etc.—Petitioners.

*versus*

RAM CHAND, etc.—Respondents.

Civil Revision No. 788 of 1970.

August 3, 1971.

*Code of Civil Procedure (Act V of 1908)—Order 22 rule 10—Property mortgaged and then sold—Vendee instituting suit for redemption of the*

*mortgage—Sale pre-empted—Successful pre-emptors—Whether can be substituted for the vendee as plaintiff in the suit for redemption.*

*Held*, that when mortgaged property is sold and the sale is pre-empted, the equity of redemption vests in the successful pre-emptor and he can bring, in that capacity, a suit seeking possession by way of redemption of the mortgage. The mere fact that the successful pre-emptor gets substituted for the original vendee goes to show that all rights that were conferred on the original vendee under the sale-deed have come to be devolved on the successful pre-emptor. When the vendee brings a suit for redemption of the mortgage before the sale in his favour is pre-empted, the successful pre-emptor has a right to be substituted for the plaintiff under Order 22 rule 10 of the Code of Civil Procedure and continue the suit from the stage it had reached when application under rule is filed.

*Petition Under Section 44 of Act IX of 1919 and Section 115 C.P.C. for revision of the order of the Court of Shri A. K. Jain, Additional District Judge, Gurgaon, dated 13th May, 1970, reversing that of Shri Arjan Singh, Sub-Judge 1st Class, Palwal, dated 14th November, 1969, accepting the appeal, dismissing the application filed by Dharam Chand and Shanti Devi, respondent under Order 22 Rule 10 of C.P.C. and leaving the parties to bear their own costs.*

G. C. Mittal, Advocate, for the petitioner.

S. C. Kapoor, Advocate, for the respondents.

#### JUDGMENT

HARBANS SINGH, C.J.—(1) This is a revision against an order of the lower appellate Courts refusing to grant an application under Order 22, rule 10, Civil Procedure Code (hereinafter referred to as the Code), of the successful pre-emptors to be substituted for the original vendee who had brought a suit for redemption against the mortgagees. The facts as are necessary may be stated as under :—

(2) The property in dispute was mortgaged with Ram Chander, Khubi and Kishan. The owners sold the same to Badri Parshad, plaintiff in the suit out of which the present revision has arisen. Badri Parshad filed a suit against the mortgagees for possession of the property by way of redemption. A preliminary decree for redemption was passed on payment of Rs. 1,850 on 12th August, 1966, and it was directed that the payment shall be made within six months.

(3) Meanwhile Dharam Chand and Mst. Shanti brought two suits for possession of their respective shares by pre-emption, which were

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decreed on 6th August, 1968. As a result of this, in law, they got "substituted" for Badri Parshad so far as the original sale by the owners was concerned. They then filed an application under Order 22, rule 10 of the Code to be substituted for Badri Parshad in the suit.

(4) A number of objections were taken and three issues were settled. All these issues were found in favour of Dharam Chand etc. and the application was granted. On an appeal filed by the mortgagees, the lower appellate Court reversed the finding of the Court below on issue No. 1, which was as follows :—

"Whether the petitioners are assignees of Badri Parshad Plaintiff?"

(5) *Relying upon Shamas Din v. Sarfaraz*, (1) and *Sharif Hussain and others v. Nur Shah and others*, (2), it was held that the right of pre-emption is one of substitution and it cannot, therefore, be said that the successful pre-emptors are representatives of, or claim under, the original vendee. In view of that, it was held that the petitioners were not assignees within the meaning of Order 22, rule 10 of the Code. Dharam Chand etc. have filed this revision.

(6) On behalf of the petitioners it is urged that the lower appellate Court failed to see that the authorities relied upon have no bearing on the question as to what is the meaning of "assignee" within the purview of Order 22, rule 10 of the Code. In *Sharif Hussain's case* (2) (supra) all that was said was that if there is a decree obtained against a vendee for a declaration, the successful pre-emptor is not bound by that decree, because he does not claim under him in that sense. The headnote (a) in *Sharif Hussain's case* (2) runs as under :—

"The doctrine of *lis pendens* is applied to things coming into existence during the pendency of the suit and not where there is an existing right prior to the suit. In a case where the right of pre-emption had accrued before the declaratory suit was instituted and pre-emptors had also obtained their decree for pre-emption long prior to the declaratory suit being instituted the doctrine of *lis pendens* had no application."

(1) 1911 P.L.R. 960.

(2) A.I.R. 1929 Lah. 589.

In this connection, it was observed that the right of pre-emption is one of substitution and in that sense the pre-emptor does not claim under the vendee.

(7) One thing is very clear that being substituted for the vendee, the equity of redemption now vests in Dharam Chand etc., and in that capacity they can certainly bring a suit seeking possession by way of redemption. Now what they are trying to do is that whatever proceedings have been taken by the vendee, for whom they have been substituted, they are prepared to be bound by the same. They do not challenge the amount that they were directed to pay to the mortgagees. So far as the mortgagees are concerned, they did not go in appeal against the order passed and so they are satisfied with the amount awarded. All that Dharam Chand etc., want to do is their substitution for the original vendee so that they can redeem the mortgage by making the payment and the decree is made final. There can be no sense in the multiplicity of the proceedings by forcing the successful pre-emptors to file a separate suit in which the same matters shall have to be gone into all over again. The words used in order 22, rule 10 of the Code are—

“In other cases of “an assignment, creation or devolution of any interest \* \* \*”.

(8) These words have been used in a very wide sense and cover a number of different matters. There are a number of decided cases in which during the pendency of the suit, if the mortgagee or the mortgagor becomes insolvent, the Receiver has a right to be substituted under this Order. See in this connection *Karim Bux and others v. Khesa and others*, (3) *Pulavarthi Ammanna and others, v. Pommireddipalli Ramakrishna Rao and others*, (4) and *Kala Chand Banerjee v. Jagannath Marwari and another*, (5). The very object of Order 22, rule 10, would be frustrated if the words used are interpreted in a narrow sense. No decided case was brought to my notice dealing with the case of a pre-emptor but the very fact, that he gets substituted for the original vendee, would go to show that all rights that were conferred on the original vendee under the sale

(3) A.I.R. 1935 Lah. 316.

(4) A.I.R. 1949 Mad. 886.

(5) A.I.R. 1927 P.C. 108.

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deed had come to be devolved on the successful pre-emptor. In that view of the matter, I have no hesitation in holding that the successful pre-emptors in this case have to be substituted for the plaintiffs and continue the suit from the stage it had reached when the application under Order 22, rule 10, of the Code was filed.

(9) For the aforesaid reasons, I accept this revision, set aside the order of the lower appellate Court and restore that of the trial Court. Parties will appear in the trial Court on 30th August, 1971. Records will be sent back immediately. No order as to costs.

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K.S.K.

REVISIONAL CRIMINAL

Before A. D. Koshal and Bhopinder Singh Dhillon, JJ.

L. D. KATARIA.—Petitioner.

versus

K. N. KUTTY.—Respondent.

Criminal Revision No. 51-M of 1970.

August 3, 1971.

*Code of Criminal Procedure (V of 1898)—Section 197—Member of Indian Administrative Service appointed as Managing Director of a State Government Corporation—Offence alleged to have been committed by such Managing Director while acting in the discharge of his official duty—Sanction for prosecution under section 197—Whether necessary.*

*Held*, that when a member of the Indian Administrative Service is appointed as Managing Director of a State Government Corporation and an offence is alleged to have been committed by him, while acting or purporting to act in the discharge of his official duty, sanction to prosecute him under section 197 of the Code of Criminal Procedure for the alleged offence is not necessary. While holding the office of the Managing Director of the Corporation he is no doubt a public servant as envisaged by clause Twelfth of section 21 of the Indian Penal Code being in the service or pay of a Government Company as defined in section 617 of the Companies Act; but all public servants cannot be given the benefit of the provisions of sub-section (1) of section 197 which deals only with one kind of public servants, namely, those public servants who are not removable from their office save by or with the sanction of a State Government or the Central Government. It is true