

of the *karta* the partnership stands dissolved. The case will now be remitted to the Division Bench for disposal.

DULAT, J.—I agree.

GOSAIN, J.—I agree.

B.R.T.

Khairati Ram
and another
v.
Firm Balak
Ram-Mehr
Chand, etc.

G. D. Khosla, J.
Dulat, J.
Gosain, J.

LETTERS PATENT APPEAL

Before Bhandari, C.J. and Falshaw, J.

DITTU RAM,—Plaintiff-Appellant.

versus

BALWANT RAI AND OTHERS,—Defendants-Respondents

Letters Patent Appeal No. 187 of 1959.

Punjab Pre-emption Act (I of 1913)—Agricultural land being used for purposes of a brick-kiln for more than a year before sale—Whether retains its character as agricultural land liable to be pre-empted

1959

Aug. 21st

Held, that the relevant date for determining whether the land in suit was agricultural or not is the date of the sale. The land which had been used for purposes of running a brick-kiln for more than a year before sale had ceased to be agricultural land and cannot be pre-empted.

Appeal under Clause 10 of the Letters Patent from the judgment of the Hon'ble Mr. Justice Harbans Singh, dated the 19th day of March, 1959, reversing that of Shri K. S. Chadha, District Judge, Hissar, dated the 9th August, 1958, and restoring that of Shri G. K. Bhatnagar, Senior Sub-Judge, Hissar, dated the 3rd March, 1958, dismissing the plaintiff's suit and leaving the parties to bear their own costs, and further ordering that the defendants will have their costs in the lower appellate Court and the trial Court.

C. L. LAKHANPAL and S. L. GUPTA, for Appellant.

H. L. SARIN and LALIT MOHAN SURI, for Respondents.

JUDGMENT

Falshaw, J.

FALSHAW, J.— This is a Letters Patent appeal against the order of Harbans Singh, J., accepting a second appeal and restoring the decree of the trial Court by which the suit of the appellant for possession of certain land by pre-emption was dismissed.

The facts are as follows. Balwant Rai and Gopal Krishan, defendants, took on lease from Nand Lal, defendant, an area of 20 *bighas* and 12 *biswas* of land lying within the municipal limits of the town of Hissar for a period of five years by the deed Exhibit D. 2, dated the 4th of January, 1956, on an annual rent of Rs. 500 for the purpose of setting up and working a brick-kiln. They embarked on this enterprise and after about a year and a half, on the 15th of July, 1957, they purchased the land from Nand Lal. The plaintiff Dittu Ram instituted a suit for possession by pre-emption in November, 1957.

The suit was contested by the vendees who, apart from challenging the plaintiff's superior right of pre-emption and raising other points, pleaded that the land in suit was not agricultural land and was, therefore, not liable to be pre-empted. This point was decided in their favour by the trial Court, which dismissed the plaintiff's suit without going into the other issues raised. The learned District Judge, however, in first appeal held that the land in suit was agricultural and accepting the appeal, remanded the suit to the trial Court for decision on the other issues.

The only question before the learned Single Judge in second appeal was whether the land was agricultural land liable to be pre-empted or not and he has upheld the finding of the trial Court.

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and others

Falshaw, J.

The legal proposition is not now disputed that the relevant date for determining whether the land in suit was agricultural or not was the date of the sale. There is no doubt that at the time of the lease in January, 1956, the land, which was admittedly assessed to land revenue, was being used for agricultural purposes. The *khasra girdawari* for the previous harvest shows that vegetables were being cultivated on 7 *bighas* and 12 *biswas* of the land and the remainder was lying fallow. There is, however, no doubt whatever that thereafter the work of setting up and working a brick-kiln was started and in *rabi* 1956, 14 *bighas* and 12 *biswas* were described as *ghair mumkin bhatta* and the rest as vacant. This description continued for the next two harvests and in November, 1957, 20 *bighas* and 2 *biswas* were entered as *bhatta* and 10 *biswas* as *kothas*. The trial Court inspected the spot and found that apart from a small area on which residential accommodation had been built for labourers the rest of the land was being used for purposes connected with the manufacture of bricks.

It seems that in deciding the point in the plaintiff's favour the learned District Judge had relied mainly on the decision of Chevis, J., in *Salamat Rai v. Kanshi Ram and others* (1). This was a very brief judgment from which the facts appear to be that the land in suit was undoubtedly used for agricultural purposes at the time of the sale. It was assessed to land revenue and it was situated

(1) A.I.R. 1918 Lah. 334(1)

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within the municipal limits of the town of Hoshiarpur and it was held that the land had not lost its agricultural character by being included in the municipal limits of the town or by reason of the fact that the vendee had bought it for the purpose of erecting a house and had after that purchase built a wall around it and stored materials on it.

There is no need to quarrel with this decision which appears to be perfectly correct on the facts of the case, but I entirely agree with the learned Single Judge that it is wholly inapplicable to the facts of the present case in which it is quite clear that for a year and a half before the date of the purchase the land which had formerly been agricultural land, had been converted into a working brick-kiln.

Even in the absence of authority I should have had no hesitation in holding that the land which had been used for purposes of running a brick-kiln for more than a year before sale had ceased to be agricultural land, but there are two cases which have some bearing on the point. The first of these is *Tej Ram and others v. Tuli and others* (1), in which Frizelle, C.J., held that a tank which was used for watering cattle and excavating earth to make bricks was not 'land' within the meaning of the definition in Punjab Tenancy Act, 1887. The other is *Lala Khazanchi Shah v. Haji Niaz Ali* (2), in which Bhide, J., held that the land which had been used as a brick-kiln was not 'land' within the meaning of the definition in Punjab Alienation of Land Act. I thus consider that the matter was rightly decided by the learned Single Judge and dismiss the appeal with costs.

Bhandari, C. J. BHANDARI, C.J.—I agree.

B.R.T.

(1) 48 P.R. 1898

(2) A.I.R. 1940 Lah. 126