

FULL BENCH

APPELLATE CIVIL

Before R. S. Narula C.J., Prem Chand Jain and B. S. Dhillon, JJ.

PARTAP SINGH,—Plaintiff-Appellant.

versus

NIRMAL SINGH ETC.,—Defendants-Respondents.

Letters Patent Appeal No. 411 of 1975.

CM 973 of 1977

June 2, 1977.

Punjab Pre-emption (Repeal) Act (11 of 1973)—Section 3—Decree for possession by pre-emption passed by trial Court—Vendee's appeal in respect of improvements dismissed—Superior right to pre-empt not challenged in appeal—Second appeal by vendee—Suit of the pre-emptor—Whether to be dismissed by allowing such appeal in view of the repealing Act.

Held, that it is wrong to say that all other pleas except the plea in respect of compensation having been abandoned before the first appellate court, the second appeal would be deemed to be an appeal only against the decree so far as it related to the question of compensation and it is also incorrect that the filing of such an appeal would not take away the effect of the decree for possession by pre-emption which had become final merely because the second appeal was entertained against the pre-emption decree. After having entertained the appeal as filed, it had to be disposed of on merits. While doing so, it is correct that at the time of the hearing, the appellant may not be permitted to agitate the points which had been abandoned in the first appellate court and the appeal may be dismissed on that score, but even such a dismissal would result into the passing of a decree. If during the pendency of the second appeal, the Repealing Act came into force, then its provisions had to be given effect to. Since an appeal is a rehearing of the suit, therefore, if the High Court were to dismiss the appeal then it would be passing a decree in a suit for pre-emption which could not be done. The second appeal, therefore, has to be allowed and the suit of the pre-emptor dismissed in view of the coming into force of the Repealing Act.

(Para 6).

Letters Patent Appeal under Clause X of the Letters Patent Appeal from the judgment decree of Hon'ble Mr. Justice Gurnam Singh, dated

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the 7th May, 1975 passed in R.S.A. No. 1935 of 1970 allowing the appeal against the judgment of Additional District Judge, Ferozepore, dated the 4th November, 1970, who affirmed that of the Senior Subordinate Judge, Ferozepore, dated the 1st January, 1970 whereby the plaintiffs suit was dismissed.

Civil Misc. No. 973 of 1977.

Application on behalf of Thana Singh Respondent No. 3 under section 151 of C.P.C. praying that the appeal be held to be dismissed as barred by limitation as against Thana Singh, and further as a necessary corollary the entire appeal as against all the respondents should be dismissed with costs.

Balraj Bahl and A. L. Bahl, Advocates, for the appellant.

K. L. Sachdeva and D. S. Kang, Advocates, for the Respondents.

JUDGMENT

Prem Chand Jain, J.

(1) Partap Singh has filed this appeal under Clause X of the Letters Patent against the judgment and decree of a learned Single Judge of this Court, dated May 7, 1975, by which the appeal filed by Nirmal Singh and others was allowed. The facts of the case, on which there is no dispute, are as follows: —

(2) Vir Singh, son of Saudagar Singh sold his agricultural land measuring 67 Kanals 4 Marlas situated in village Sursinghwal to Nirmal Singh and others on December 16, 1967, for a consideration of Rs. 24,000. Partap Singh later on claiming himself to be the nephew of Vir Singh filed a suit for declaration and in the alternative for possession of the land in exercise of his superior right of pre-emption. The suit was contested by the vendee-defendants. On the pleadings of the parties, various issues were framed. During the course of trial, the relief on the basis of the declaration was given up and decree in the suit was claimed only on the basis of superior right of pre-emption. The trial court found that the plaintiff had a superior right of pre-emption and accordingly passed a decree for possession by pre-emption on payment of Rs. 24,000. The plea in respect of improvements set up by the vendee-defendants was negatived. Feeling aggrieved from the judgment and decree of the trial court the vendees preferred an appeal which was dismissed by the learned

Additional District Judge, Ferozepore. Still dissatisfied, the vendees preferred Regular Second Appeal No. 1835 of 1970, which, as earlier observed, was allowed by a learned Single Judge of this Court on the ground that after the enforcement of the Punjab Pre-emption (Repeal) Act, 1973 (hereinafter referred to as the 'Repealing Act') no decree could be passed in a suit for pre-emption. Dissatisfied from the judgment and decree of the learned Single Judge, the present appeal under Clause X of the Letters Patent has been preferred by the pre-emptor.

(3) The Motion Bench at the time of the motion hearing admitted the appeal and ordered the same to be heard by a Full Bench. That is how the matter has been placed before us.

(4) It was strenuously contended by Mr. Bahl, learned counsel for the appellant, that the vendee-defendants did not contest the superior right of pre-emption of the plaintiff; that only issue No. 10 relating to the improvements alleged to have been made was pressed before the learned Additional District Judge; that the decree for possession by pre-emption passed in favour of the plaintiff-appellant had become final as the same was not challenged on merits before the first appellate Court; that the regular second appeal filed in this Court by the vendees was only against compensation and that in this situation, the learned Single Judge fell in error in invoking the provisions of the Repealing Act and in dismissing the suit of the plaintiff-appellant. It was also submitted by the learned counsel that an appeal against the decree of the first appellate Court in respect of improvements only, would not be deemed to be an appeal against the decree for possession by pre-emption and that while dismissing such an appeal which has been filed only in respect of compensation, no decree shall be deemed to have been passed by the Court in a suit for pre-emption after the coming into force of the Repealing Act. In support of the aforesaid contention, the learned counsel relied on the following two judgments:—

(1) *Thakar Singh v. Partap Singh and others*, (1); and

(2) *Aziz Din v. Sham Das and others*; (2).

(1) 1960 P.R. 732.

(2) 91 P.R. 1892.

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It was further argued by the learned counsel that the regular second appeal was neither maintainable nor competent so far as the same related to the pre-emption decree and the defendant-vendees could not legally take up the pleas in the regular second appeal, which they had abandoned in the first appellate Court. In support of his contention, the learned counsel placed reliance on the following judicial pronouncements of the different High Courts:—

- (1) *Abdul Karim v. The Shop Thakar Ram-Jaggu Ram and others*, (3);
- (2) *Muhammad Aslam v. F. Mehr Singh-Attar Singh*, (4);
- (3) *Dheru and others v. Hira Lal and others*, (5);
- (4) *Firm Meghraj-Roormal v. Firm Anup Singh-Battu Mal*, (6);
- (5) *Bawa Singh and another v. Mt. Taro*, (7);
- (6) *Sheo Prashad Rambhajan v. Kanhiyalal Ramniwas and another*, (8); and
- (7) *Ramanuamma v. Nagamma and another*, (9).

(5) On the other hand, it was submitted by Mr. Sachdeva, learned counsel for the vendee-respondents that the regular second appeal was filed against the judgment and decree of the learned Additional District Judge affirming the judgment and decree of the trial Court and that the learned Single Judge was right in holding that if the regular second appeal was to be dismissed, then it would result in passing a decree in a pre-emption suit which could not legally be done.

- (3) A.I.R. 1923, Lahore 124.
- (4) A.I.R. 1927, Lahore 768.
- (5) A.I.R. 1932, Lahore 343.
- (6) A.I.R. 1935, Allahabad 1004.
- (7) A.I.R. 1951, Simla 239.
- (8) A.I.R. 1953, Ajmer 52.
- (9) A.I.R. 1968, Andhra Pradesh 223.

(6) After giving my thoughtful consideration to the entire matter, in the circumstances of the case, I am of the view that there is considerable force in the contention of Mr. Sachdeva, learned counsel for the vendee-respondents. From the facts, as they appear from the file, there is no gain saying that before the learned Additional District Judge, only the question of improvements was gone into and that no argument was advanced on any other issue. But it is equally clear that the decree for possession by pre-emption which had been passed by the trial Court had been challenged as a whole by the vendee-respondents before the first appellate Court by filing an appeal against that decree. After the dismissal of the appeal by the learned Additional District Judge, the vendees did not keep quiet and decided to file an appeal in this Court. It would be pertinent to observe that the appeal in this Court was also against the decree for possession by pre-emption that had been passed in favour of the plaintiff as is apparent from the grounds of appeal in which the vendees had challenged that no decree for possession by pre-emption could legally be passed in favour of the plaintiff. In this situation, Mr. Bahl is not justified in contending that the appeal in this Court had not been filed against the decree for possession by pre-emption. Further, I find no merit in this contention of the learned counsel also that all other pleas except the plea in respect of compensation having been abandoned before the first appellate Court, the appeal in this Court would be deemed to be an appeal only against the decree so far as it related to the question of compensation and the filing of such an appeal would not take away the effect of the decree for possession by pre-emption which had become final merely because the appeal in this Court was entertained against the pre-emption decree. After having entertained the appeal as filed it had to be disposed of on merits. While doing so, it is correct that at the time of hearing the appellant may not be permitted to agitate the points which had been abandoned in the first appellate Court and the appeal may be dismissed on that score; but even such a dismissal would result into the passing of a decree. As earlier observed, during the pendency of the appeal, the Repealing Act came into force and its provisions had to be given effect to. It has been authoritatively laid down by their Lordships of the Supreme Court in *Amarjit Kaur v. Pritam Singh*, (10), that an appeal is a re-hearing and that if the High Court were to dismiss the appeal then it would be passing a decree in a suit for pre-emption.

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Consequently, I find that the learned Single Judge was right in allowing the appeal of the vendees in view of the coming into force of the Repealing Act.

(7) It may be observed that I have no quarrel with the proposition enunciated in the judicial pronouncements referred to above, on which reliance was placed by Mr. Bahl, but all those decisions are distinguishable and do not apply to the facts of the case in hand. In this situation, no useful purpose would be served in burdening the judgment by discussing those decisions individually.

(8) For the reasons recorded above, this appeal fails and is dismissed, but in the circumstances of the case I make no order as to costs.

(9) Civil Miscellaneous application No. 973 of 1977, filed by Thana Singh respondent, was not pressed during the course of arguments. Accordingly, the same is also dismissed.

R. S. Narula, C.J.—I agree.

Bhopinder Singh Dhillon, J.—I agree.

N. K. S.

FULL BENCH

APPELLATE CIVIL

Before Bhopinder Singh Dhillon, Harbans Lal and S. P. Goyal, JJ.

MAHANT BUDH DASS and another,—Appellants.

versus

THE SHIROMANI GURDWARA PARBANDHAK COMMITTEE,
AMRITSAR,—Respondent.

First Appeal From Order No. 52 of 1966

June 3, 1977.

Sikh Gurdwaras Act (VIII of 1925)—Sections 2(4) (i) and (iv)
7, 8, 10, 12 and 14—Code of Civil Procedure (V of 1908)—Order 6—