

period. It has merely restrained the petitioner from interfering with the management of the Gurdwaras, and has vested the management in a third person who also happens to be a member of the Committee. Whether the person appointed by the Commission is fit one in the circumstances of the case or not, is not a matter on which I can adjudicate in these proceedings. Mr. Rekhi then submitted that I should hold that in view of the applicability of the entire Code of Civil Procedure to the proceedings before the Commission, the provisions of Order 43 rule 1 of the Code would also apply, and that it should be held that an appeal lies to this Court against the interim orders passed by the Commission. Mr. Gujral contests this proposition. It is wholly unnecessary to decide this question in the present proceedings, as admittedly no appeal has been preferred by the petitioner against the impugned order.

No other point has been argued before me in this case. The writ petition, therefore, fails and is dismissed, but without any order as to costs.

B.R.T.

APPELLATE CIVIL

Before S. B. Kapoor and Gurdev Singh, JJ.

KARTAR SINGH,—*Appellant*

versus

GHUKAR SINGH AND OTHERS,—*Respondents*

Regular Second Appeal No. 1083 of 1964

December 12, 1966

Punjab Security of Land Tenures Act (X of 1953)—S. 19-A—Punjab Pre-emption Act (1 of 1913)—S. 4—Pre-emptor possessing more than permissible area on the date of sale sought to be pre-empted—Whether has the right of pre-emption.

Held, that if on the date of sale to be pre-empted, the pre-emptor is already in possession of more than the permissible area, it is not open to him to acquire any further agricultural land by transfer, etc., without violating the provisions of section 19-A of the Punjab Security of Land Tenures Act, 1953. If at the time

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of the sale he had asserted a superior right and the vendor had agreed to transfer the land to him in recognition of that right, such transfer would have been void in view of the clear language of sub-section (2) of section 19-A of the Act. He, therefore, does not possess the right of pre-emption as defined in section 4 of the Punjab Pre-emption Act.

Regular Second Appeal from the decree of the Court of Shri Sant Ram Garg, District Judge, Ferozepur, dated the 30th day of April, 1964, reversing (on the vendee-defendant's appeal) that of Shri Narinder Singh, Sub-Judge, 1st Class Muktsar, dated the 21st October, 1963, and dismissing the plaintiff's suit and leaving the parties to bear their own costs. The appeal of the plaintiff was also dismissed.

G. R. MAJITHIA, ADVOCATE, for the Appellants.

M. L. SETHI, ADVOCATE, for the Respondents.

JUDGEMENT

GURDEV SINGH, J.—This second appeal arises out of a suit brought by the appellant Kartar Singh for possession by pre-emption of 167 kanals 18 marlas of land situate in village Singhewala, which was sold by Shrimati Sham Kaur on 20th September, 1961, by means of a registered sale deed for Rs. 28,000 to the respondents Ghukar Singh and others. He claims superior right of pre-emption on the ground that he was the son of the vendor's husband's brother and was a tenant-at-will of this land. Besides denying these allegations, the vendees resisted the suit *inter alia* on the plea that the plaintiff-appellant being a big land-owner was debarred from acquiring more land under section 19A of the Punjab Security of Land Tenures Act, and the sale was not pre-emptible as the vendees were themselves the tenants of the land in dispute at the time of the sale. Though the learned trial Judge found that the appellant owned 116 standard acres of land and was thus a big land-owner, he held that section 19A of the Punjab Security of Land Tenures Act did not debar him from exercising his right of pre-emption, and the sale was pre-emptible as there was no satisfactory evidence to prove that the vendees were the tenants of the land in dispute on the date of the sale. Accordingly, a decree for possession by pre-emption was granted to the appellant on payment of Rs. 23,540 on 21st October, 1963. This decree has, however, been reversed by the learned District Judge, Ferozepur, on an appeal filed by the vendees. The learned Judge, while affirming the findings of the trial Court that the plaintiff-appellant Kartar Singh was in possession of more than the permissible area at the time of sale and thereafter and was

thus a big land-owner, has held that no decree could be passed in his favour in view of the provisions of section 19A and section 23 of the Punjab Security of Land Tenures Act. It is against this appellants decree, dated 30th April, 1964, that the plaintiff has come up to this Court.

It is not disputed before us, as found by both the Courts below that the plaintiff-appellant Kartar Singh was a big land-owner and holding more than the permissible area, as defined in section 19A of the Punjab Security of Land Tenures Act, on the date of the sale, and he continues to be a big land-owner. It is also not disputed that he has a preferential right of pre-emption being the brother's son of the vendor's husband. The only question for consideration before us is whether in view of the provision of section 19A of the Punjab Security of Land Tenures Act placing restrictions on acquisition of land, he could be granted a decree for possession by pre-emption. Section 19-A of the Punjab Security of Land Tenures Act reads thus:—

“19A. Notwithstanding anything to the contrary in any law, custom, usage, contract or agreement, from and after the commencement of the Punjab Security of Land Tenures (Amendment) Ordinance, 1958, no person, whether as land owner or tenant, shall acquire or possess by transfer, exchange, lease, agreement or settlement any land, which with or without the land already owned or held by him shall in the aggregate exceed the permissible area:

Provided that nothing in this section shall apply to lands belonging to registered Co-operative Societies formed for purposes of co-operative farming if the land owned by an individual member of the society does not exceed the permissible area. (2) Any transfer, exchange, lease, agreement or settlement made in contravention of the provisions of sub-section (1) shall be null and void.”

The learned District Judge has taken the view that the word “transfer” used in this section is wide enough to cover acquisition through pre-emption, and since section 23 of the same Act provides that “no decree or order of any Court or authority and no notice of ejectment shall be valid save to the extent to which it is consistent with the provisions of this Act,” it is not open to the Court to pass a decree for possession in his favour.

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Shri G. R. Majithia, appearing for the appellant, has contended that the learned District Judge had wrongly interpreted the provisions of Punjab Security of Land Tenures Act and the bar to further acquisition imposed by section 19A of the Act does not extend to acquisitions by pre-emption. In this connection, he has cited two Division Bench authorities of this Court reported as *Bhupinder Singh v. Shrimati Surinder Kaur and another* (1) and *Mangla and others v. Sukhminder Singh and others* (2), wherein it has been laid down that the grant of a pre-emption decree does not violate, nor has the effect of violating, the provisions contained in section 19A of the Punjab Security of Land Tenures Act and the question of violation of this provision can properly be decided only when the pre-emptor seeks to take possession of the suit-land through execution.

Shri M. L. Sethi, appearing for the respondent-vendees, besides submitting that these cases have not been correctly decided and they require further consideration, has contended that no decree could be passed in the plaintiff's favour as he did not possess the right of pre-emption either at the time of sale or on the date when the suit was decreed by the trial Court. He argues that section 15 of the Punjab pre-emption Act, on which the appellant has based his right of pre-emption merely enumerates the persons in whom the right of pre-emption vests and the order of preference in which they can exercise that right, but before a person can claim benefit of this provision, he has to satisfy the Court that he possesses the right to pre-empt as defined in section 4 of the Punjab Pre-emption Act, which runs as follows:—

“The right of pre-emption shall mean the right of a person to acquire agricultural land or village immovable property or urban immovable property in preference to other persons, and it arises in respect of such land only in the case of sales and in respect of such property only in the case of sales or of foreclosures of the right to redeem such property.

Nothing in this section shall prevent a Court from holding that an alienation purporting to be other than a sale is in effect a sale.”

(1) I.L.R. (1965) 2 Punj. 513=1965 P.L.R. 735.

(2) 1965 Cur. L.J. (Pb.) 519.

Mr. Sethi argues that on the date of sale the appellant had no right to acquire the land in suit as the land already owned and possessed by him was far in excess of the permissible area, and, accordingly, he had no right of pre-emption which he could exercise under section 15 of the Act. In reply to these contentions, Shri G. R. Majithia has merely relied on the provisions of section 15 of the Punjab pre-emption Act and the two decisions of this Court *Bhupinder Singh v. Shrimati Surinder Kaur and another* (1) and *Mangla and others v. Sukhminder Singh and others* (2). Both these authorities are distinguishable on facts, as in the cases with which their Lordships were dealing, the pre-emptors were holding less than the permissible area and were not the big land-owners on the date of the sale and it was only if the area sought to be pre-empted was added to their holdings, that they were to become the big land-owners. It was in those circumstances that it was ruled that there was no bar to the passing of a pre-emption decree. In *Bhupinder Singh's case*, Dulat, J., delivering the judgment of the Court, observed:—

“The pre-emption decree merely says that in case the amount in question is deposited by a certain date the pre-emptor would be entitled to possession, and it is impossible to say at the time of passing the decree whether the pre-emptor will or will not come to own the land for it can just as well happen, in case the pre-emptor chooses not to deposit the money or is for various reasons unable to do so, that the suit may stand dismissed. We are, therefore, unable to hold as a matter of law that the granting of a pre-emption decree violates or has the effect of violating the provisions contained in section 19A of the Punjab Security of Land Tenures Act, and, that being so, there seems no reason why the pre-emptor should be debarred from obtaining the decree in terms in which it is framed.”

These observations cannot apply to the case with which we are dealing. When admittedly on the date of the sale the appellant was already in possession of more than the permissible area, it was not open to him to acquire any further agricultural land by transfer, etc., without violating the provisions of section 19A of the Punjab Security of Land Tenures Act, 1953. If at that time of the sale he had asserted a superior right and the vendor had agreed to transfer the land to him in recognition of that right, such transfer would have been void in view of the clear language of sub-section (2) of section 19A of the Punjab Security of Land Tenures Act. Mr. Sethi

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is thus right in urging that on the date of the sale the plaintiff-appellant had no right to acquire any land and thus did not possess the right of pre-emption as defined in section 4 of the Punjab Pre-emption Act, 1913.

It has been found by the lower appellate Court, and this is a finding of fact which can neither be disputed before us nor has it been challenged, that even thereafter the appellant continued to own land in excess of the permissible limit. Accordingly, his suit was liable to dismissal on the short ground that he had no right of pre-emption either on the date of the sale or the date of the suit or on the date when the decree was passed in his favour by the trial Court. It is well-settled, as has been recently laid down by a Full Bench of this Court in *Ramji Lal and another v. The State of Punjab and others* (3), that a pre-emptor must not only have a right to pre-empt on the date of sale but must also retain his qualification up-to the date of the decree of the trial Court. In view of our finding that the appellant had no right of pre-emption on all these three occasions, his suit must fail, and the learned District Judge quite rightly dismissed the same. I thus find no force in this appeal and dismiss the same, but in the circumstances of the case leave the parties to bear their own costs.

S. B. CAPOOR, J.—I agree.

K.S.K

REVISIONAL CIVIL

Before S. B. Kapoor and Gurdev Singh, JJ.

RAGHBIR SINGH,—*Petitioner*

versus

THE ELECTION TRIBUNAL, AMBALA AND ANOTHER,—*Respondents*

Civil Revision No. 934 of 1966

December 19, 1966

Representation of the People Act (XLIII of 1951)—Ss. 117 and 118—Recreation Petition—Security for costs—When to be deposited—Security deposited

(3) I.L.R. (1966) 2 Punj. 125 (F.B.)=1966 P.L.R. 345.