

APPELLATE CIVIL

Before D. K. Mahajan, J.

FAQIR CHAND AND ANOTHER,—Appellants

versus

LAL SINGH AND OTHERS,—Respondents.

Regular Second Appeal No. 326 of 1959.

Punjab Security of Land Tenures Act (X of 1953) as amended by Act (IV of 1959)—Section 17-A—Provisions of—Whether to be taken into consideration in deciding an appeal which was pending at the time Section 17-A came into force.

1959

July 21st

The Punjab Security of Land Tenures (Amendment) Ordinance, 1958 (Punjab Ordinance No. 6 of 1958) added Section 17-A to the Punjab Security of Land Tenures Act (X of 1953). The Ordinance was later on repealed and in its place the Punjab Security of Land Tenures (Amendment) Act (IV of 1959) was passed wherein Section 17A is word for word the same.

At the time the Ordinance came into force, a pre-emptor's suit had been dismissed and an appeal was pending before the District Judge who decreed the suit without considering the provisions of Section 17-A.

Held, that since the Ordinance had come into force before the appeal was decided by the District Judge, the appellate Court was bound to give effect to the provisions to Section 17-A of the Punjab Security of Land Tenures Act and had no option but to dismiss the suit.

Second Appeal from the decree of Shri C. G. Suri, Additional District Judge, Jullundur, dated the 27th day of February, 1959, reversing that of Shri Om Parkash Sharma, Sub-Judge 1st Class, Jullundur, dated the 17th May, 1958 and granting the plaintiff a decree with costs throughout for possession by pre-emption of the land in suit on payment of Rs. 4475 and further ordering that the plaintiff would deposit the pre-emption amount after deducting the costs, in the trial Court on or before the 1st of April,

1959, failing which the suit would be deemed to have been dismissed with costs throughout.

M. R. CHIBBAR, for Appellants.,

V. P. GANDHI AND Y. P. GANDHI, for Respondents.

JUDGMENT

MAHAJAN, J.—This is an appeal by the vendees against the pre-emption decree. The sale is of land measuring 72 *kanals* 7 *marlas* for a sum of Rs. 4,350 and was effected on the 6th of June, 1956, by defendants Nos. 3 and 4 (Kesar Singh and Sampuran Singh) to defendants 1 and 2 (Faquir Chand and Sant Ram). This sale was pre-empted by one Lal Singh on the grounds that he was a relation of the vendors and that he was an owner in the estate and, therefore, had a superior right of pre-emption.

Mahajan, J.

The suit was contested by the vendees.

The defence was that the pre-emptor was not a relation of the vendors and that he was not an owner in the estate and in any case under the Punjab Security of Land Tenures Act (No. X of 1953), the vendees being tenants of the land had a superior right of pre-emption as against the vendees.

The trial Court dismissed the suit on the 17th of May, 1958, holding that the plaintiff-pre-emptor was not a relation and that he was not an owner in the estate. The pre-emptor appealed to the learned District Judge, Jullundur, who on the 27th of February, 1959; allowed the appeal. He upheld the finding of the trial Court as to the plaintiff not being a relation of the vendors, but he upset the other finding, namely that the plaintiff was an owner in the estate and that the vendees were not.

Dissatisfied with this decision, the vedees have come up in appeal to this Court.

Mr. Chhibar, learned counsel for the appellants, has drawn my attention to section 17 of the Punjab Security of Land Tenures Act, 1953. The relevant portion of section 17 of the Act reads as under:—

Faqir Chand and
another
v.
Lal Singh
and others
Mahajan, J.

“Section 17. Notwithstanding anything to the contrary contained in any law, usage or contract, and subject to the provisions of section 18, a tenant of a land-owner other than a small land-owner:—

(i) who has been in continuous occupation of the land comprised in his tenancy for a period exceeding four years on the date of the sale of the land or foreclosure of the right to redeem the land, or

(ii) * * * *

(a) * * * *

(b) * * *

shall in preference to the rights of other pre-emptors as provided in the Punjab Pre-emption Act, 1913 (Act I of 1913), except the decendants of vendor's grandfather, be entitled to pre-empt the sale or foreclosure of the land other than the land comprised in the reserved area of the land owner in the manner prescribed in that Act within one year from the date of the sale or foreclosure, as the case may be;

Faqir Chand and
another
v.
Lal Singh
and others

Mahajan, J.

Provided that no tenant referred to in this sub-section shall be entitled to exercise any such right in respect of the land or any portion thereof if he had sublet the land or the portion, as the case may be, to any other person unless during that period the tenant was suffering from a legal disability or physical infirmity, or, if a woman, was a widow or was unmarried."

According to this provision in order to defeat the pre-emption the vendees had merely to show that they were the tenants of the land for more than four years. In the sale deed executed by the vendors in favour of the vendees it is recited that the land is in possession of the vendees as tenants. In the *pata kasht* produced on the record, the vendees are entered as tenants of the land. Subsequently, the qualification that the tenant has been in continuous possession for four years of the tenancy was done away with in the amendment of the Act that followed in the year 1958, namely the Punjab Security of Land Tenures (Amendment) Ordinance, 1958 (Punjab Ordinance, No. 6 of 1958), wherein section 17(A) was introduced. This section runs as under:—

"Section 17(A)(1): Notwithstanding anything to the contrary contained in this Act or the Punjab Pre-emption Act, 1913, a sale of land comprising the tenancy of a tenant made to him by the land-owner shall not be pre-emptible under the Punjab Pre-emption Act, 1913, and no decree of pre-emption passed after the commencement of this Act in respect of any such sale of land shall be executed by any Court.

- (2) Where, after the commencement of this Act, a tenant, to whom the land comprising his tenancy is sold by the landowner, has been dispossessed of such land by a pre-emptor in execution of a decree for pre-emption or otherwise, the tenant so dispossessed shall in the prescribed manner have the option either to purchase the land from the pre-emptor on payment of the price paid to the tenant by the pre-emptor or to be restored to his tenancy under the pre-emptor on the same terms and conditions on which it was held by him immediately before the sale, on an application made by him to an Assistant Collector of the first grade having jurisdiction within a period of one year from the commencement of the Punjab Security of Land Tenures (Amendment) Ordinance, 1958.
- (3) An application received under sub-section (2) shall be disposed of by the Assistant Collector of the first grade in the manner laid down in sub-section (2) of section 10."

Faqir Chand and
another
v.
Lal Singh
and others
Mahajan, J.

This Ordinance was later on repealed and in its place, the Punjab Security of Land Tenures (Amendment) Act (No. 4 of 1959), was passed, wherein section 17A is word for word the same as in the Ordinance. At the time when the Ordinance came into force, the situation was that the pre-emptors' suit had been dismissed and an appeal was pending before the District Judge. At the time when the District Judge passed the pre-emption decree the Ordinance had come into force and according to section 17A of the Ordinance there was no option left to the District Judge but

Faqir Chand and
another
v.
Lal Singh
and others
Mahajan, J.

to dismiss the suit. It is rather curious that in spite of the fact that this plea was raised by the defendants in their written statement, no reference was at all made by the learned District Judge to it. The entire decision of the District Judge is, therefore, vitiated and I have no option but to set aside the same. In this view of the matter, no other point arises in the appeal.

For the reasons given above, this appeal is allowed and the vendee-appellants will have their costs in this Court as well as in the Courts below.

K. S. K.

APPELLATE CIVIL

Before Bishan Narain and Dua, JJ.

PRABHU AND OTHERS,—Appellants.

versus

MST. JIWNI,—Respondent.

Regular Second Appeal No. 73 of 1932.

1959
July, 23rd

Punjab Limitation (Custom) Act (I of 1920)—Article 2—Terminus a quo for suit for possession—Declaratory decree obtained by remoter reversioners—Whether enures for the benefit of a nearer reversioner who had consented to the alienation—Consenting reversioner surviving the alienor—Effect of—Remoter reversioners—Whether entitled to succeed on the death of the alienor or that of the consenting reversioner who survived the alienor. ...

Held that the *terminus a quo* for a suit for possession under article 2 of the Punjab Limitation (Custom) Act, 1920 is the date on which the right to sue accrued or the date on which the declaratory decree was obtained whichever is later and the period of limitation would be three years.

Held, that the proposition that when a declaratory decree has been obtained by some reversioners, then the individual reversioner, who actually happens to be the next