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have fixed one rate for one brother and another rate for the other brother. Therefore when the Government filed an appeal against the award of the arbitrator both the brothers had to be made parties. In fact both of them were made parties and since the appeal in so far as it relates to Labhu Ram has abated the rate determined by the arbitrator must hold good so far as his share is concerned. If the appeal of the Government were allowed the compensation payable to Nathu Ram would be assessed at a lower rate. This means that there would be two contradictory judgments in respect of the same piece of land. By one of these judgments the rate fixed by the arbitrator would be the correct rate and another rate would be fixed by this Court in appeal. Had the lands of Labhu Ram and Nathu Ram been partitioned before they were requisitioned the case would have been otherwise.

I must, therefore, hold that these proceedings could not have been instituted against one of the brothers only. The entire land was held jointly by the brothers and one of the inevitable results would be two contradictory decisions in respect of the same matter. I would therefore hold that these appeals have abated *in toto* and are liable to be dismissed. I would accordingly dismiss them but make no order as to costs. The cross objections are also dismissed.

FALSHAW, J.—I agree.

Falshaw, J.

APPELLATE CIVIL

Before Kapur, J.

JAI SINGH AND KANSHI, MINORS,—*Plaintiffs-Appellants*

versus

JHANDA,—*Defendant-Respondent*

Regular Second Appeal No. 375 of 1950

1954

Sept., 14th

Punjab Pre-emption Act (I of 1913)—Section 15—Meaning of "sub-division" in Section 15(c) secondly.

Held, that if after reference to the history of the village and the history of the sub-divisions, there is homogeneity of area or of descent, the sub-divisions would fall within the definition of "sub-division" as used in section 15(c) secondly of the Act.

Case Law discussed.

Bhagat Hira Nand v. *Lal Khan* (1), *Uttam* v. *Buta and others* (2), *Sadda and others* v. *Majja Singh* (3), *Bija* v. *Bishan Singh* (4), *Basawa Singh* v. *Natha Singh* (5), *Waryam Singh* v. *Mehtab Singh* (6), *Uttam Chand* v. *Mehtab Singh* (7), *Ram Partap* v. *Kishen Singh* (8), *Pakhar Singh* v. *Labhu Ram* (9), *Parbhu* v. *Shamasud Din* (10), referred to.

Second Appeal from the decree of Shri Jawala Singh, Senior Sub-Judge, Rohtak, dated the 4th day of April, 1950, reversing that of Shri Y. L. Taneja, Sub-Judge, 1st Class, Rohtak, dated the 18th October, 1949, and dismissing the plaintiff's suit but leaving the parties to bear their own costs.

F.C. MITAL, for Appellant.

H. R. SODHI, for Respondent.

JUDGMENT

Kapur, J.

KAPUR, J.—The plaintiff has brought this appeal against an appellate decree of the Senior Subordinate Judge of Rohtak reversing the decree of the trial Court and thus dismissing the plaintiff's suit for pre-emption.

Puran, a resident of village Dighal, sold a half share of 3 *bighas* 4 *biswas* of land in village Gangtan to Jhanda by a registered deed, dated the 2nd February, 1943, for Rs 2,500. Tulsi, plaintiff, brought a suit for pre-emption on payment of

(1) 169 P.R. 1889
(2) 69 P.R. 1893
(3) 76 P.R. 1894
(4) 45 P.R. 1897
(5) 60 P.R. 1914
(6) 21 P.R. 1915
(7) 67 I.C. 48
(8) A.I.R. 1937 Lah. 32
(9) A.I.R. 1947 Lah. 322
(10) A.I.R. 1945 Lah. 199

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Rs. 600 only on the ground that the land was situate in *pana* Daya Ram in which he was a proprietor and the vendee was not and, therefore, he had a superior right of pre-emption. The defendant denied the right of the plaintiff and pleaded that there was no division of the village into *panas* and that the land of the different *panas* was intermixed. The trial Court decreed the plaintiff's suit and after referring to the history of the village Exhibit P. 4, and the history of the *panas* Exhibit P. 5, it held that the village was divided into separate sub-divisions on the basis of decent and not for fiscal purposes and it followed a judgment of Mahajan, J., in *Prabhu* v. *Shamasud Din and another* (1). Dealing with the history of the village, the *panas* and the pedigree-table the trial judge stated:—

> "Exhibit P. 4 was a copy of sec. 1 of the founding of the village and that copy showed that the village was founded by one Gangu who lived at first in the neighbouring village of Dighal and who separated from his collaterals and got land which formed the present estate of village Gangtan. His descendants divided the estate in the course of time but how those divisions were effected was not known as twenty-two generations had passed by 1879 but the village had four *panas* mentioned above based on the names of the four ancestors of the proprietors and the area held by one *pana* had no connection with the ancestral shares.
>
> Exhibits P. 5 to P. 8 were the copies of the history of each of the four *panas* which showed that each *pana* was a

(1) A.I.R. 1945 Lah. 199

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separate entity and no *pana* had any connection with any other *pana* so far as proprietorship of the land was concerned.

Exhibit P. 2 was the pedigree-table of 1879 and it showed that one Gobind was a direct descendant of Gangu in the 13th generation and he had five sons Jodhan, Bhopat, Ganga Ram, Harmal and Nihala. Jodhan had three sons Raman, Bhoja and Shyam Kour. Raman's grandson was Ghasi, Bhoja's son was Nanda and Shyam Kour's grandson was Daya Ram and after these three we had the names of the three *panas*. Bhopat's grandson was Kalla and the fourth *pana* was named after him."

The defendant took the matter in appeal to the Senior Subordinate Judge who held that (1) the village was founded by one person, (2) the whole village has one common *shamilat* and there is no separate *shamilat* attached to each *pana*, (3) the lands of the four *panas* are intermixed with each other and thus there is no distinct territorial division, and (4) that within the village the possession is the measure of ownership and not ancestral shares, and from these he came to the conclusion that there were no distinct sub-divisions for the purposes of the Pre-emption Act, and he therefore reversed the finding of the Subordinate Judge and dismissed the plaintiff's suit. The plaintiff is now the appellant in this second appeal.

I have already given from the judgment of the trial Court the gist of the *kafiyat-i-dehi* and of the history of the *panas*. They all show that there

is a division of the village into four *panas* and there is homogeneity because of descent though there is no homogeneity of area, and the division of the village into *panas* is of a pre-British period as a matter of fact thirteen generations previous to the date of the *kafiyat-i-dehi.*

In my opinion if a village is divided into separate *panas* and there is homogeneity on account of descent that is quite sufficient to show the separation of the village into distinct areas for the purposes of the Pre-emption Act. Under section 15(c) *secondly* "the right of pre-emption in respect of agricultural land and village immovable property shall vest

> (c) if no person having a right of pre-emption under clause (a) or clause (b) seeks to exercise it.—
>
> * * * *
> * * * *
>
> *secondly*, in the owners of the *patti* or other sub-division of the estate within the limits of which such land or property is situate.

Thus we have to see what is the meaning to be attached to the word 'patti' or 'sub-division' of the estate mentioned in this section.

This matter has been the subject-matter of decision in several cases decided by the Punjab Chief Court and some decided by the High Court of Lahore. In *Bhagat Hira Nand* v. *Lal Khan* (1), it was held that in order to bring a case within section 12 of the Punjab Laws Act all that is necessary is to show that the village is divided into recognised

(1) 169 P.R. 1889

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sub-divisions and that there is nothing in the section from which one could say that the term 'sub-division' in the section has to be construed with reference to any particular principle of division. All that is necessary to show to bring a case within the section is that the village is divided into recognised sub-divisions and in that case it was shown by the evidence that Rawalpindi was so divided and the boundaries of the *taraf* were entered in the Settlement Record.

In *Uttam* v. *Buta and others* (1), the division of *pattis* into *thulas* was recognised, and in *Sadda and others* v. *Majja Singh* (2), it was held that the village was distributed into *pattis* not for collection of revenues but there was real sub-division into *pattis*. In this case *thula* Ramon was found to be a territorial sub-division of the village, comprising land in which the land in suit was situate and with a separate group of land-holders.

In *Bija* v. *Bishan Singh* (3), it was held that there was no territorial division, the *shamilat* had recently been divided according to *khewat*, there was no recognition of the division by Settlement Officer and there was intermingling of the lands, and therefore it was held that there were no recognised *pattis* or sub-division.

In *Sher Singh* v. *Maluk Singh* (4), it was held that in order to justify treatment of a section of the village as a sub-division within section 12(c) of the Punjab Laws Act there must be homogeneity of area or because of descent of the proprietors, and in determining the point the first thing to be looked to is the history of the village as far as it

(1) 69 P.R. 1893
(2) 76 P.R. 1894
(3) 45 P.R. 1897
(4) 142 P.L.R. 1905

can be ascertained. In that case it was found that the *zails* were constituted by mere arbitrary grouping together of certain holdings so as to form an association of proprietors with no connecting ties and also there was a common *shamilat* and a common *lambardar* and therefore the *zails* were not held to be sub-divisions for the purposes of the Pre-emption Act.

In *Basawa Singh* v. *Natha Singh* (1), it was held that each of the two *thulas* had a separate *shamilat thula*, in which the proprietors of the other *thula* had no share, and each *thula* was entered in and authenticated by the Settlement Record. On the basis of this finding it was held that the *thulas* were separate sub-divisions of the village for the purposes of the Pre-emption Act.

In *Waryam Singh* v. *Mehtab Singh* (2) the land in dispute was situate in a village on Pakh Branch in the Lyallpur District. It was found that *pattis* had been made for fiscal purposes only and the law was stated as follows:—

> The law of pre-emption as applicable to village communities was intended primarily, at all events, to protect the village against the intrusion of strangers who might otherwise obtain a footing in it contrary to the wishes of the community who were bound to each other by ties of descent, and would resent the advent of an intruder. This principle can obviously have no application when the village is of about recent foundation and is composed of individuals whose sole connection *inter se* is that each has been selected by Government as a person to whom a grant of land might fitly be made."

(1) 60 P.R. 1914
(2) 21 P.R. 1915

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Uttam Chand v. *Mehtab Singh* (1), is another case in which this question was raised. There *pattis* were created for fiscal purposes and it was held that there was no real sub-division of the village.

In *Ram Partap* v. *Kishan Singh* (2), it was held that there were no real distinct sub-divisions of the village, there was a common *shamilat*, there was intermingling of lands and there was neither any distinctness on the ground of homogeneity of area nor of descent.

The next case is *Raja Painda Khan* v. *Kahan Singh* (3). The *tarafs* there were created for fiscal purposes. They did not represent homogeneity of area or descent of the proprietors, and the land was inter-mixed, possession was the measure of ownership and *shamilat* belonged to the whole village.

Cornelius, J., in *Pakhar Singh* v. *Labhu Ram* (4), held in that particular case that there was no territorial sub-division and, therefore, the case was not within section 15 of the Pre-emption Act. Besides this there was common *shamilat* and distribution of the produce of the *shamilat* was in accordance with *khewat*.

There is, however, a judgment of Mahajan, J., in *Parbhu* v. *Shamasud Din* (5), where it was held that in order to determine as to whether there is division within section 15(c) *secondly* of the Punjab Pre-emption Act the question to be decided is whether a sub-division was a recognised one,

(1) 67 I.C. 48
(2) A.I.R. 1937 Lah. 32
(3) A.I.R. 1937 Lah. 703
(4) A.I.R. 1947 Lah. 322
(5) A.I.R. 1945 Lah. 199

and the method of determining this question is to find out after reference to the *Kaifiyat-i-dehi* of the village as to the foundation of the various divisions, and if it is found that the demarcation is not for fiscal purposes but is based on homogeneity of descent, then there is a distinct subdividing for the purposes of the Pre-emption Act and the subsequent history of ownership in the various *pattis* is not to be a determining factor. At page 201 in paragraph (7) the learned Judge said—

> "Recently in Regular Second Appeal No. 1396 of 1944 sitting with the learned Chief Justice I followed the rule laid down in 21 P. R. 1915 and it was held that in order to determine whether a particular *patti* or a subdivision of a *patti* was a recognised sub-division of a village in the true sense of that term reference must be made to the *kaifiyat-i-dehi* of the village and it should be ascertained whether the sub-division of the village was between various branches of one family or whether these sub-divisions were made by the revenue authorities for fiscal purposes only. It seems to me that the two Courts below have failed to examine the present case in the light of the decision mentioned above. The *kaifiyat-i-dehi* which is the all important document to determine the nature of the foundation of the *zails* has entirely been overlooked by them. They have placed reliance merely on the present constitution of these *zails*. It is true that as at present constituted

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the *zails* of village Sohana have ceased to represent homogeneity of descent. Even before the year 1852, strangers had been allowed entrance in the various *zails* and measure of right by mutual consent between the proprietors had become possession rather than ancestral shares but the subsequent history of ownership in these *zails* is not the determining factor in order to find whether the *zails* when originally founded were homogeneous in descent as well as in area."

In that particular case the division was founded on the basis of homogeneity of descent. Some of the *zails* had a separate area of *shamilat* appurtenant to them while the others had no *shamilat* at all and there was also some intermingling of land. It was held that this does not determine the matter one way or the other, nor is the admission of strangers into the *zails* or *pattis* a considerable time after they came into existence material.

This case, in my opinion, lays down what is the correct principle on which the Court is to proceed and I respectfully agree with this. If it is found after reference to the history of the village and the history of the sub-divisions, if there is any, that there is homogeneity of area or of descent, the sub-divisions would fall within the definition of "sub-division" as used in section 15(c) *secondly* of the Pre-emption Act. The trial Court in the present case rightly held that there was homogeneity due to descent and I would therefore allow this appeal, set aside the decree of the lower appellate Court and restore that of the trial Court. The parties in this case will bear their own costs throughout.