State of Punjab and others v. Raghunath Dass

Tek Chand, J.

ed Single Judge is eminently just and is in accordance with law. It was also urged that complications would arise, as the licences had been re-auctioned and they are being exploited by the other parties. This argument was rejected on the ground that the successful bidders on re-auction had acquired their rights during the pendency of *lis* and such rights could have no precedence over those which had already been validly acquired by the petitioners. It was also remarked that this argument was not available to the counsel for the State as it amounted to pleading the State in default.

For the reasons detailed above, the appeals of the State are devoid of merit and I would, therefore, dismiss them with costs.

H. R. KHANNA, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before Mehar Singh and Shamsher Bahadur, JJ.

BALWANT SINGH AND OTHERS,—*Appellants.*

versus

KEHAR SINGH,—*Respondent.*

Khanna, J.

Regular Second Appeal No. 1719 of 1960.

1962

August, 20th

Punjab Pre-emption Act (I of 1913) as amended by Punjab Pre-emption (Amendment) Act (X of 1960)—S. 5—Exclusion of right of pre-emption in respect of sale of agricultural waste land reclaimed by vendee—Whether extends up to the date of suit or decree.

Held, that under section 5 of the Punjab Pre-emption Act as amended by Punjab Pre-emption (Amendment) Act, X of 1960, the agricultural waste land which is saved from the pre-emption suit is only the land which has been

reclaimed by the vendee up to the date of the suit and not beyond. The vendee is given protection by the legislature only in respect of land which he may have reclaimed since it was sold to him. To say that the vendee is given a *carte-blanche* to reclaim as much of the land as he can even after the pre-emption suit is filed would lead to a good deal of undesirable manoeuvring and delay in litigation and would add an element of uncertainty to the vicissitudes and hazards of litigation.

Case referred by Hon'ble Mr. Justice I. D. Dua, on 15th December, 1961, to a larger Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Mehar Singh and Hon'ble Mr. Justice Shamsher Bahadur, after deciding the question referred, returned the case to the Single Bench for disposal on 20th August, 1962. The Hon'ble Mr. Justice I. D. Dua, on 16th October, 1962, remanded the case to the Sub-Judge, 1st Class, Kaithal (the trial Court) for further evidence and submitting back with his report.

Regular Second Appeal from the decree of the Court of Shri Om Parkash Sharma, Senior Sub-Judge, with Enhanced Appellate Powers, Karnal, dated 30th August, 1960, reversing that of Shri Ved Parkash, Aggarwal, Sub-Judge, 1st Class, Karnal dated 30th July, 1959, and holding that the plaintiffs in both the suits are entitled to possession of 151 Bighas and 6 Biswas of land each and on payment of Rs. 8,785.12 nP.

POORAN CHAND, ADVOCATE, for the Appellants.

ROOP CHAND AND RAM RANG, ADVOCATES, for the Respondents.

ORDER

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—The question of law which has been referred to this Bench for decision is whether the scope of the amended section 5 of the Punjab Pre-emption Act excluding the right of pre-emption in respect of a sale of agricultural waste land reclaimed by the vendee extends up to the date of the suit or the decree. The issue did

not arise out of the pleadings as filed originally but the question arose during the pendency of the appeals after the amending Act had come into force.

Under the Punjab Pre-emption (Amendment) Act (Punjab Act No. 10 of 1960), section 5 reads as under :—

"5. No right of pre-emption shall exist in respect of—

(a) the sale of or foreclosure of a right to redeem—

(i) a shop, serai or katra;

(ii) a dharmsala, mosque or other similar building; or

(b) *the sale of agricultural land being waste land reclaimed by the vendee.*

Explanation.—For the purposes of this section the expression 'waste land' means land recorded as banjar of any kind in revenue records and such ghair mumkin lands as are reclaimable."

The portion underlined did not form part of section 5 before the Amending Act which was notified in the Gazette of 4th of February, 1960.

For purposes of this reference it is not necessary to go into elaborate factual details of the two appeals, *Balwant Singh, etc.* v. *Kehar Singh, etc.* (R.S.A. No. 1719 of 1960) and *Ladha Singh* v. *Gurbachan Singh* (R.S.A. No. 1720 of 1960). These are set out in the appellate judgments of the Senior Subordinate Judge delivered in both cases on 30th of August, 1960. The common question on which

Balwant Singh and others *v.* Kehar Singh

Shamsher Bahadur, J.

the matter has been decided in both the appeals by the lower appellate Court was put in issue in this form:—

> "Whether the land in suit was waste land reclaimed by the vendees as defined in sub-section (b) of section 5 of Act No. 10 of 1960, if so, with what effect ?"

Pala Singh vendor owned 310 *bighas* of land which he sold in equal portions by two separate sale-deeds, one to Ladha Singh and the other to the sons of Ladha Singh, on 3rd of August, 1957, each set of vendees paying a sum of Rs. 9,000. Two separate suits were filed to pre-empt these sales, one by Kehar Singh, son of Pala Singh and the other by Gurbachan Singh, grandson of Pala Singh. Both these suits were consolidated and were dismissed by the Subordinate Judge on 30th of July, 1959, on the ground that the land was saved from pre-emption under section 17-A of the Punjab Security of Land Tenures Act, the vendees being tenants in a portion of the holding sold to them. Two separate appeals were filed and during their pendency the Punjab Pre-emption (Amendment) Act, 1960, came into force. In the view of the lower appellate Court, clause (b) of section 5 becomes operative from the date of suit and has taken into reckoning the area which has been reclaimed by the vendees up to that date. The vendees have come in appeal to this Court and the main contention raised before the learned Single Judge was that the vendee should get advantage of the reclamation done right up to the date of the decree. Dua, J., considering that the question is not free from difficulty has referred it for decision of a larger Bench.

The principal argument raised by Mr. Puran Chand, the learned counsel for the appellants in

both the appeals, is that the newly inserted section 31 of the Punjab Pre-emption (Amendment) Act No. 10 of 1960, enjoins the Court to give effect to the provisions of the Amending Act including clause (b) of section 5 right up to the time when the decree is granted. Section 31 of the Amending Act is to this effect:—

> "31. No court shall pass a decree in a suit for pre-emption whether instituted before or after the commencement of the Punjab Pre-emption (Amendment) Act, 1959, which is inconsistent with the provisions of the said Act."

It is submitted by Mr. Puran Chand that if the land reclaimed by the vendee only up to the date of the suit is taken into account, this would be inconsistent with the provisions of the Amending Act. Plainly, the purpose of section 31 is to give operation to the provisions of the Act to all the pending suits and decrees and we do not see how this provision of law can be pressed into service in favour of the contention raised by the learned counsel. Under clause (b) of section 5, the right of pre-emption is definitely excluded in respect of agricultural waste land which has been reclaimed by the vendee and no Court can ignore this provision at the time when the decree is being passed. It is quite a different matter whether the reclamation for which the vendee is to receive credit is in respect of land so reclaimed up to the time of the suit or the decree. The counsel has invited our attention to the decision of the Division Bench of Chief Justice Khosla and Dulat, J., in *Ram Lal* v. *Raja Ram and another* (1), where it was held that "the Punjab Pre-emption (Amendment) Act, 1960, must be given effect to not only in fresh

(1) 1960 P.L.R. 291.

Balwant Singh and others *v.* Kehar Singh

Shamsher Bahadur, J.

suits filed or suits pending but also in those cases in which appeals are pending and have not been decided." The provisions of section 31 would at once be attracted where the appellate Court has to deal with a pending appeal in which a pre-emption suit has been decreed in respect of agricultural waste land reclaimed by the vendee. The vendee, in other words, would be able to claim exemption in respect of land which he has reclaimed, but the question would still remain whether the land had been reclaimed prior to the institution of the suit or thereafter.

If the contention of the appellants is allowed to prevail an element of uncertainty would be added to the vicissitudes and hazards of litigation. It is the sale of waste land reclaimed by the vendee which is protected from the hands of the pre-emptor and obviously the relevant date is the one when the pre-emption suit is filed. The vendee is given protection by the legislature only in respect of land which he may have reclaimed since it was sold to him. To say that the vendee is given a *carte-blanche* to reclaim as much of the land as he can even after the pre-emption suit is filed would lead to a good deal of undesirable manoeuvring and delay in litigation. Only a resourceless vendee would be left with any un-reclaimed land by the time that a decree is passed. We agree with the view which has been taken by Capoor, J., in *Surjoo, etc.* v. *Gurdial* (R.S.A. No. 51 of 1961), in an unreported judgment of 20th of July, 1961. To construe clause (b) of section 5, as suggested by the counsel for the appellants, would lead to an implication, in the words of Capoor, J., that "the position existing even at the time of the final appeal would have to be taken into consideration" and "would mean that litigation may go on pending for years without an end

and during this period the vendee will certainly take care to reclaim whatever land was lying as *banjar qadim* in order to defeat the pre-emptor's right with regard to that land." An attempt to counter this argument has been made by the suggestion that it would make it possible for a suit for pre-emption to be brought immediately after the sale, thereby preventing the vendee from reclaiming any waste land. If we accept the contention of the appellants, we encourage, on the other hand, a vendee to take his own time to complete the reclamation of land. We do not think that the interpretation should be made to depend on the promptness of the pre-emptor or the convenience of the vendee. The plain and grammatical meaning of the word "reclaimed" should be our sole guide. As such of the agricultural waste land as has been reclaimed by the vendee is saved from the hands of the pre-emptor, there is no warrant to assume that the word "reclaimed" includes land to be reclaimed. This construction enables us to reach a conclusion without the addition of anything more than is actually in the statute itself and has been rightly preferred by the lower appellate Court. If a vigilant suitor thereby stands to gain we should remain uninfluenced by this result. After all, it should not be regarded as an unmeritorious reward for a pre-emptor who in knowledge of the law is prompt enough to bring a suit for pre-emption in respect of agricultural waste land even when the vendee has not had a chance to reclaim it after the sale.

We do not think that this construction would violate or contravene the intention of the legislature. Indeed, our attention has been drawn by Mr. Rup Chand, learned counsel for the respondents, to the object clause of the Punjab Pre-emption (Amendment) Act, 1960, where it is stated

Balwant Singh and others *v.* Kehar Singh

Shamsher Bahadur, J.

that the Act "also hampers private transfers of property to landless persons who are harassed by pre-emption suits after they have settled on the lands and reclaimed them." The object clause makes it plain that the mind of the legislature was exercised by the unsettling effects of pre-emption suits in respect of waste land which had already been reclaimed by landless vendees. It is true that the statement of objects and reasons is not admissible as an aid to the construction of a statute, but, as observed by their Lordships of the Supreme Court in *Kochuni* v. *States of Madras and Kerala* (2), it may be referred to for the limited purpose of ascertaining the conditions prevailing at the time the bill was introduced and the purpose for which the amendment introduced by the bill in a previous Act was made. It seems to us that the mischief which the legislature wanted to remove was the pre-emption of lands which the vendees had taken considerable trouble and effort to reclaim after the purchase and the construction which we have placed on the word "reclaimed" is in consonance with the objective before the legislature.

There is one other argument of Mr. Rup Chand which has to be noticed. It is contended by him that the contention raised on behalf of the appellants is hit by the rule of *lis pendens* which no doubt is as much applicable to a suit to enforce a right of pre-emption as to any other suit, as observed by their Lordships of the Supreme Court in *Bishan Singh and others* v. *Khazan Singh and another* (3). We must confess our inability to see the relevancy of the rule of *lis pendens* in the present instance. It is true that the pre-emption

(2) A.I.R. 1960 S.C. 1080.

(3) A.I.R. 1958 S.C. 838.

Balwant Singh and others v. Kehar Singh

Shamsher Bahadur, J.

suits were pending at the time when the amendment saving certain lands from pre-emption was introduced. If the legislature in its wisdom had thought it fit to introduce a new ground of pre-emption or a new defence to a pre-emptive suit and retrospective operation is to be given to these provisions, it would be no answer to say that the rule of *lis pendens* has been violated. We do not think that Mr. Rup Chand can seek the aid of the rule of *lis pendens* in favour of the result contended for.

We would, therefore, answer the question of law referred to us thus: The land which is saved from the pre-emption suit is only the land which has been reclaimed up to the date of the suit and not beyond. These appeals would now be placed before the learned Single Judge for disposal. There would be no order as to costs.

MEHAR SINGH, J.—I agree.

Mehar Singh, J.

B.R.T.

CIVIL MISCELLANEOUS

Before Tek Chand, J.

PUNJAB MERCHANTILE BANK, LTD.,—*Decree-Holder*

versus

KISHAN SINGH AND ANOTHER,—*Judgment-Debtors.*

Liquidation Miscellaneous No. 42 of 1962:

Liquidation Miscellaneous No. 85 of 1962

Execution No. 34/L of 1960:

1962

Sept., 17th

Code of Civil Procedure (Act V of 1908)—S. 47 and Order 21, Rule 90—Objections to auction-sale—Whether can be made by a person who has no interest in the property sold—Fraud played upon the Court and decree-holder in the conduct of auction-sale—Court—Whether can suo motu *refuse to confirm the sale—Inherent powers of the Court—Nature and extent of.*