the land. We are in no way impressed with this contention which we consider has no force. It is unnecessary to discuss the further points raised, and we dismiss the appeal with costs throughout.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Chevis and Mr. Justice Dundas.

JAWALA SINGH (PLAINTIFF)—*Appellant,*

versus

TARA SINGH, ETC. (DEFENDANTS)—*Respondents.*

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May 21.

Civil Appeal No. 2089 of 1916

Punjab Pre-emption Act, I of 1913, section 15 (c) thirdly—owner of a small plot of land, unassessed to revenue—whether one of the owners of the estate.

Plaintiff claimed pre-emption in respect of a sale of a house in the village *abadi*. He based his claim on the plea of being one of the owners of the estate. Plaintiff was a *malik kabza* and owned only a small plot of land of 8 *marlas*, unassessed to revenue and uncultivated except to a trifling extent and clearly destined to be a building site.

Held, that the plaintiff was not one of the "owners of the estate" within the meaning of section 15 (*c*) *thirdly* of the Punjab Pre-emption Act, and that his claim to pre-emption was consequently inadmissible.

Phallu v. *Mukarrab* (1), *Man Singh* v. *Dip Singh* (2), *Sham Sunder* v. *Sodhi Harbans Singh* (3), and *Narain Singh* v. *Gopal Singh* (4), followed.

Lal Khan v. *Aajib Ullah* (5), *Dasu* v. *Jowala* (6), *Jasmir Singh* v. *Rahmatullh* (7), distinguished.

Harjallu Mal v. *Nathu Ram* (8), disapproved.

The facts of the case are given in the judgment.

Second appeal from the decree of N. H. Prenter Esquire, District Judge, Jhelum, dated the 25th Marc

(1) 153 P. R. 1888.
(2) 96 P. R. 1898.
(3) 109 P. L. R. 1908.
(4) 106 P. R. 1913.
(5) 14 P. R. 1882.
(6) 13 P. R. 13 85
(7) 7 P. R. 1896.
(8) 51 P. R. 1907.

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1916, *reversing that of Mirza Zahur-ud-Din, Munsiff, Ist Class, Chakwal, District Jhelum, dated the 28th February* 1916, *decreeing the claim.*

GOKAL CHAND, NARANG, for Appellant.

SHEO NARAIN, for Respondents.

The judgment of the Court was delivered by —

CHEVIS, J.—This is a pre-emption suit relating to a house in a village. The plaintiff Hari Singh, now dead and represented by his son, Jawala Singh, brought this suit basing his right to pre-empt on the ground of being one of the owners of the estate (see section 15 (*c*) *thirdly* of the Pre-emption Act). The first Court decreed the claim. The learned District Judge on appeal has dismissed the suit holding that the plaintiff is not one of the owners of the estate. Plaintiff appeals to this Court.

Plaintiff's claim to be one of the owners of the estate rests on the fact that he owns a plot of 8 *marlas* of land. This plot though not within the village *abadi* is quite close to it. and is surrounded on all sides by residential houses. It has never been cultivated except that for 2 or 3 years past the plaintiff has grown a very small quantity of *charri* on it. The plot is certainly destined to become a building site. Plaintiff's family have been recorded as *malikan kabza* since 1860 and at one time held rather more land, but have sold off all but the 8 *marlas*. Plaintiff's family have never taken part in agricultural labour, and do not derive their maintenance from agriculture. They are Hindu strangers in the village. The plot of 8 *marlas* is not assessed to land revenue.

The foregoing facts are all stated in the judgment of the learned District Judge, and have not been disputed in this Court.

Rai Bahadur Sheo Narain, for the respondents, raises preliminary objections urging that the plaint was not properly verified and that there was no real presentation of the plaint until after limitation had expired; also that evidence has recently been discovered which

shows that even the 8 *marlas* in question were sold by plaintiff as far back as 1895. It is unnecessary to record any finding as to these objections, as after having heard the plaintiff's counsel we are of opinion that the appeal must fail on the merits.

There is good authority for holding that a man is not debarred from pre-empting by the mere fact that he is only a *malik kabza* and owns no share in the village *shamilat*. Nor is he debarred merely by the fact that he is an owner by purchase. But we do not consider that it necessarily follows that every person who owns any immoveable property in a village, however small, must be regarded as one of the "owners of the estate."

For the plaintiff-appellant it is urged that every one who holds any land capable of cultivation is an owner. *Lal Khan* v. *Najib Ulla* (1) and *Desu* v. *Jowala* (2) are quoted, but it is not clear how much land was owned by the plaintiffs in these cases or whether the land was assessed to revenue. Then *Jasmir Singh* v. *Rahmatulla* (3) is quoted. This, however, is a case in which the plaintiff owned no less than 100 *bighas* of waste land, though it was not assessed to revenue. Then *Harjallu Mal* v. *Nathu Ram* (4) is quoted to prove that even ownership of houses and building sites is sufficient; but a different view is held in *Narain Singh* v. *Gopal Singh* (5), which points out that the above remarks are in the nature of *obiter dictum* as the plaintiffs' claim to pre-empt was thrown out in *Harjallu Mal* v. *Nathu Ram* (4) on other grounds.

The following rulings are against the plaintiff. In *Phallu* v. *Mukarrab* (6) it was held that a *kamin* who had purchased a small site in the *abadi* could not pre-empt: in this judgment the words "land-owners" or "land-holders" are held to mean the proprietary body who pay the land revenue assessed on the estate.

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(1) 14 P. R. 1882.
(2) 13 P. R. 1885.
(3) 7 P. R. 1896.
(4) 51 P. R. 1907.
(5) 106 P. R. 1913.
(6) 153 P. R. 1888.

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In *Man Singh* v. *Dip Singh* (1) ownership of 1 *kanal* 1½ *marlas* of unculturable pond was held not to make the owner one of the "land-owners" or "land-holders." In *Sham Sunder* v. *Sodhi Harbans Singh* (2) ownership of a site in the *abadi* formerly assessed to revenue but afterwards built on was held to be insufficient.

And in *Narain Singh* v. *Gopal Singh* (3) ownership of houses in the *abadi* was held to be insufficient.

Some of these rulings do not apply exactly to the present case, where the plaintiff owns not merely houses or building sites in the *abadi*, but a plot of land just outside the *abadi*. But reference to these rulings is useful to see what view has generally been held as to the meaning of the words "land-owners of the *patti*," "land-holders of the village" (See Punjab Laws Act), and "owners of the estate."

For the definition of estate we have to turn to the Land Revenue Act, where we find an estate defined as any area—

(*a*) for which a separate record-of-rights has been made;

(*b*) which has been separately assessed to land revenue or would have been so assessed if the land revenue had not been released, compounded for or redeemed; or

(*c*) which the Local Government may declare to be an estate.

The very definition seems to us to point to the close connection in ideas between the village—for the large majority of estates are villages—and the revenue, and we fully agree with the view expressed in *Narain Singh* v. *Gopal Singh* (3) and other rulings that the words "owners of the estate" refer to the proprietary body of the village. It is not necessary for us to

(1) 96 P. R. 1898. (2) 109 P. L. R. 1908.
(3) 106 P. R. 1913.

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hold that in no case can a man be regarded as one of the owners of the estate unless he owns some land which is assessed to revenue, but we have no hesitation in holding that a man who o ns only a small plot of 8 *marlas*, unassessed to revenue, hitherto uncultivated except to a trifling extent and clearly destined to be a building site, cannot be regarded as one of the "owners of the estate." The plot of land is, no doubt, technically a part of the estate, but to quote from *Narain Singh* v. *Gopal Singh* (1)—

"We do not even think that a pedantically literal construction of the words 'owners of the estate' would justify an extension of the application of the term in a manner which is so clearly opposed to the whole principle upon which the Pre-emption Act is based. To justify such construction we should have to read the words 'owners of the estat' as synonymous with the words 'owners in the esttae,' and we have no authority for doing so. We think that the proper view is to take the words used in their generally accepted meaning as understood in revenue literature and as connoting exclusively what is usually described as the proprietary body of the village."

We uphold the order of the learned District Judge, dismissing the suit and dismiss this appeal with costs.

Appeal dismissed.

(1) 106 P. R. 1913.