

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Willherforce.

DALIP SINGH AND OTHERS (PLAINTIFFS)—
Appellants

versus

BALWANT SINGH AND OTHERS (DEFENDANTS)—
Respondents.

Civil Appeal No. 332 of 1916.

Colonisation of Government Lands (Punjab) Act, V of 1912, Section 19—Devise of his square by a tenant who became proprietor subsequently—whether rendered void by the Act and whether the devise passes the proprietary right.

One Sham Singh held a square of land in Chak No. 157 in the Lyallpur District as a tenant. On 5th July 1909 he made a will bequeathing "my square in Chak No. 157" to his son by a second wife. After Act V of 1912 came into force he acquired proprietary rights in the said square, and in 1913 he died. The plaintiff, the son of Sham Singh by his first wife, then brought the present suit claiming $\frac{1}{2}$ of the said square and contended, *inter alia*, that the will was rendered void and inoperative by Act V of 1912, and that a devise of occupancy rights could not pass proprietary rights. Both the Lower Courts dismissed plaintiff's suit. Plaintiff appealed to this Court.

Held that, as the testator was a proprietor at the time the succession fell in, the will was in no way rendered void or inoperative by section 19 of Act V of 1912.

Held also, that as the occupancy rights had ripened into proprietary ownership before the will became operative the square passed to the devisee under the will.

Saxton v. Saxton (1), followed.

Second appeal from the decree of A. H. Brasher, Esquire, District Judge, Lyallpur, dated the 7th August 1915, affirming that of M. Barkat Ali, Subordinate Judge, 2nd Class, Lyallpur, dated the 23rd February 1915, dismissing the suit.

NAND LAL, for Appellants.

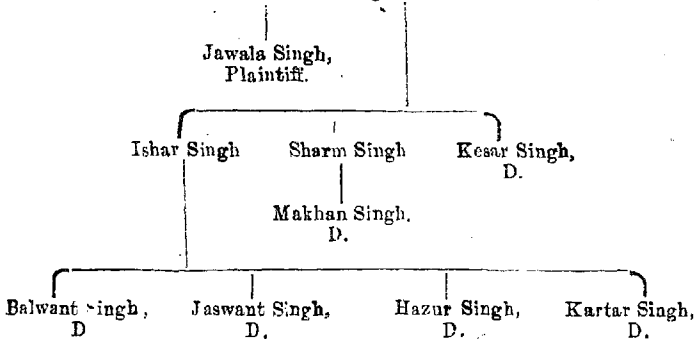
RAM CHAND, *Manchanda*, for Respondents.

The judgment of the Court was delivered by—
BROADWAY, J.—The following pedigree table will
 show the relationship of the parties :—

Met. Prem Kaur = Sham Singh = *Met.* Kishen Kaur.

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Sham Singh held a square of land in *Chak* No. 157, R. B., in the Lyallpur District, as a tenant. On the 5th July 1909 he executed a will, which was duly registered, by which he devised the said square to his issue by his wife, *Mussammat* Kishen Kaur.

On the 6th June 1912 Act V of 1912 came into force and subsequent to this date Sham Singh acquired proprietary rights in the said square ceasing thereafter to be a tenant. He died some time in 1913, and the will was apparently given effect to by the Revenue authorities who mutated the square in the names of the present defendants. On the 3rd July 1914 Jawala Singh instituted the present suit, claiming to be entitled to one-half of the said square alleging (1) that the land was ancestral; (2) that Sham Singh was not competent to make a will; (3) that Sham Singh, when he executed the will, was not possessed of a disposing mind; (4) that subsequent to the making of the will Sham Singh had made an oral promise, to come into effect after his demise, that the plaintiff was to get one-half of this square; (5) that the will propounded was of no effect having regard to the provisions of Act V of 1912; and (6) that the family was governed by the *chandavand* rule of succession and, therefore, in any event he (Jawala Singh) was entitled to the land claimed by him.

The trial Court held that the land was not ancestral; that the oral promise or will had not been proved; that Sham Singh was competent to make the will pro-

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pounded by the defendants and was of sound disposing mind when he executed it ; that the will was not rendered inoperative by Act V of 1912 ; that though at the date of its execution Sham Singh only held occupancy rights in this square at the date of his death he was a proprietor, and that the proprietary rights passed under the devise. Jawala Singh's suit was accordingly dismissed, and he preferred an appeal to the District Judge who agreed with the findings of the trial Court. Jawala Singh has now come up to this Court in second appeal, and on his behalf we have heard Mr. Nand Lal at length.

It was contended (1) that Sham Singh was not competent to make a will ; (2) that the will was rendered void and inoperative by Act V of 1912 ; (3) that under a devise of occupancy rights proprietary rights could not pass ; and (4) that by custom the appellant was entitled to the land claimed by him. As to the first contention, we have no hesitation in holding that the square being self-acquired Sham Singh was competent to dispose of the same as he liked. As to the second contention, while no doubt Act V of 1912 would have rendered the devise of the occupancy rights inoperative, when the succession fell in, the testator was a proprietor and, therefore, the will was in no way rendered void or inoperative by the provisions of section 19 of Act V of 1912. As to the third contention, a perusal of the will shows that what was devised was " my square in *Chak* No. 157 " and we have no hesitation in holding that what was devised was all the testator's right, title, and interest in the said square. When the will came into operation the occupancy rights had ripened into proprietary ownership and in our opinion the square passed under the will to the devisees. In this view we are supported by *Saxton v. Saxton* (1), where it was held that a bequest of " all my term and interest " in the leasehold dwelling-house known as B. G. will carry the fee simple if subsequent to the date of the will the testator buys in such fee simple."

Mr. Nand Lal further contended that the will had been revoked by Sham Singh's subsequent conduct. This conduct he described as Sham Singh's omission to execute a further will or to say anything more about

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.*

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. Mukarab (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. azib Ullah (5), *Dasu v. Jowala* (6), *Jasmir Singh v. Rahmatullah* (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 March

(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. 1892.

(6) 13 P. R. 18 85

(7) 7 P. R. 1896.

(8) 51 P. R. 1907.

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May 21.