

much as the plaintiff's right of pre-emption had been fully admitted. Jowala Singh actually acquired proprietary rights in 26½ kanals by that suit and thereby increased the family estate. No doubt he mortgaged his ancestral land, but this mortgage could be redeemed at any time. It appears to us, therefore, that his act in borrowing the money to obtain this land by pre-emption was an act of good management and that it must be held that Rs. 800 was raised for valid necessity.

[*The remainder of the judgment is not required for the purpose of this report—Ed.*]

C. H. O.

Appeal accepted.

### APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Moti Sagar.

GHULAM QUTAB-UD-DIN KHAN

(DEFENDANT)—Appellant,

versus

SARDARA AND OTHERS (PLAINTIFFS)—Respondent

Civil Appeal No. 474 of 1920.

1923

Feb. 14.

*Punjab Tenancy Act, XVI of 1887, sections 53 and 76 (1) (e) (f)—whether an occupancy tenant who has had notice of sale issued to the landlord can withdraw from the proceedings—Jurisdiction—Suit for possession of the occupancy holding after the sale to the landlord has been completed.*

One W., an occupancy tenant, applied on 8th June 1915 under section 53 (2) of the Punjab Tenancy Act for the issue of a notice of sale. The notice was issued, and on 21st July 1915 the landlord expressed his intention to purchase and asked the Revenue officer to fix the price. In the course of the subsequent proceedings, on 18th September 1915, W. expressed his unwillingness to sell his holding and withdrew his application. The Revenue officer however proceeded with the matter and, on 24th July 1916, fixed the price. This was paid by the landlord and possession was given to him on 6th March 1917. In October 1916, W. died and on 31st October 1917, his nephews instituted the present suit for possession of the occupancy holding as being the persons entitled to the same.

*Held*, that the jurisdiction of the lower Courts to hear the suit was not barred by section 76 (1) (e) and (f) of the Punjab Tenancy Act.

*Held also*, that an occupancy tenant who has made an application under sub-section (2) of section 53 of the Punjab Tenancy

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Act, has a *locus penitentiae* and it is open to him to withdraw from the proceedings at any time prior to the completion of the purchase by the landlord as determined by sub-section (5), just as much as the landlord has the right to refuse to accept the valuation fixed by the Revenue officer.

*Labhu v. Hamira* (1), followed.

*Second appeal from the decree of M. V. Bhide, Esquire, District Judge, Ferozepore, dated the 15th January 1920, affirming that of Sheikh Abdul Kadir, Munsif, 1st Class, Ferozepore, dated the 22nd March 1919, and decreeing the plaintiffs' claim.*

ZAFAR ULLAH KHAN, for Appellant.

BADR-UD-DIN, Kureshi, for Respondents.

The judgment of the Court was delivered by—

BROADWAY J.—On the 8th June 1915, one Wazira, an occupancy tenant, applied under section 53 (2) of the Tenancy Act for the issue of a notice of sale as required by the said section. This notice was served on the landlord on the 4th July 1915, and on the 21st July 1915 the landlord, acting under clause (3) of section 53, expressed his intention to purchase the holding and asked the Revenue officer to fix the price. In the course of the subsequent proceedings Wazira, on the 18th September 1915, expressed his unwillingness to sell his holding and thus withdrew from his application. Nevertheless the Revenue officer proceeded with the matter and on the 24th July 1916 fixed the price and directed the landlord to pay the same within two months. The money, it appears, was paid on the 23rd September 1916 to the Revenue officer and possession was given to the landlord on the 6th March 1917. In October 1916 Wazira died and on the 31st October 1917 his nephews instituted a suit for possession of the occupancy holding as being the persons entitled to the same. The Courts below having decreed the plaintiffs' suit the defendant-landlord has come up to this Court in second appeal through Mr. Zafar Ullah Khan.

It has been contended before us that the suit was barred under section 76 (1) (e) and (f) and that no Court could take cognizance of any matter relating to applications under sections 53 and 54 of the Tenancy Act. In this view we are unable to concur as in our opinion

the present suit does not attack either of the matters referred to in clause (e) and f) of sub-section (1) of section 76 of the Tenancy Act. The position really is that in answer to the suit for possession brought by the plaintiffs the defendant-appellant has set up a sale to him by Wazira under the provisions of section 53 of the Tenancy Act. It has been contended by Mr. Zafar Ullah Khan that under section 53 once an occupancy tenant governed by that section makes an application under clause (2) he has no further right or power to withdraw his application and he is bound to proceed with the sale of the occupancy tenancy. This view was negatived in *Labhu v. Hamira* (1) where it was held by the Financial Commissioner that the occupancy tenant had a *locus penitentiae* and that it was open to him to withdraw from the proceedings at any time prior to the completion of the purchase by the landlord as determined by section 53 (5) of the Tenancy Act. We have been asked to hold that this pronouncement of the Financial Commissioner is wrong and not warranted by the terms of section 53 of the Tenancy Act. It seems to us, however, that it was not the intention of the legislature to render the action of a tenant irrevocable once he had made an application under clause (2) of section 53, and that a tenant has as much right to refuse to carry on the proceedings as the landlord has to refuse to accept the valuation of the right of occupancy by the Revenue officer. It will be seen that under sub-section (5) of section 53 the Revenue officer after having decided on the value has to fix a date by which the landlord has to pay the ascertained price, but that the landlord is not compelled to pay that price and may resile from the position taken up by him under sub-clause (3). Similarly we think that a proper construction of this section enables the tenant to withdraw his offer up to such time as the landlord makes the payment contemplated by sub-clause (5).

We, therefore, agree with the view taken by the Courts below and dismiss this appeal with costs.

C. H. O.

*Appeal dismissed.*

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