

APPELLATE CIVIL

Before Mr. Justice Scott-Smith and Mr. Justice Ffords.

PARTAP SINGH (DEFENDANT)—Appellant,

1928

versus

HAKIM SINGH (PLAINTIFF)

Mst. BHAGWANI AND Mst. MAHNO } Respondents.
(DEFENDANTS)

Feb. 18-

Civil Appeal No. 224 of 1920.

Custom—Alienation—Legal necessity—amount spent in acquiring other land by pre-emption—act of good management.

Held, that money paid into Court under a decree for pre-emption was under the circumstances of the present case an act of good management justifying a mortgage of ancestral land.

Yakub Khan v. Raghpat Rai (1), followed.

Sobha Singh v. Kishore Chand (2), distinguished.

Second appeal from the decree of F. W. Kennaway, Esquire, District Judge, Hoshiarpur, dated the 15th August 1919, varying that of Pandit Onkar Nath, Zutshi, Subordinate Judge, 2nd Class, Hoshiarpur, dated the 28th March 1919.

M. L. PURI, for Appellant.

KAHAN CHAND, for BINDRA BAN, for Respondents.

The judgment of the Court was delivered by—

SCOTT-SMITH J.—This second appeal arises out of a suit by Hakim Singh and Wazir Singh, plaintiffs, for a declaration that five deeds of mortgage of ancestral land executed by their deceased brother Jowala Singh should not affect their reversionary rights after the death of defendants 3 and 4, the widows of the mortgagor. In the present appeal we are only concerned with one of these mortgages, namely, No. 2, dated the 10th of May 1909, by which 58 *kanals* of land was mortgaged to Partap Singh, appellant, for Rs. 2,628. The trial Court held that the whole of this sum, with the exception of item No. 2 for Rs. 224, had been raised for necessity, and decreed accordingly. The

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(2) 65 P. R. 1907.

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learned District Judge on appeal by Hakim Singh disallowed items amounting to Rs. 1,936 in addition to the Rs. 224 disallowed by the first Court.

In appeal Partap Singh asks us to restore the decree of the first Court. The items which go to make up the consideration of Rs. 2,628 are given in detail on page 6 of the paper book. Item No. 1 is Rs. 1,150 due on a prior mortgage-deed also in favour of Partap Singh, dated the 7th June 1905. This sum of Rs. 1,150 was made up of four items (a), (b), (c) and (d) which are given on pages 6 and 7 of the paper book. Item (a) has been disallowed by the District Judge, and that is the first item which we have to consider. That sum had been borrowed by Jowala Singh to pay into Court in a pre-emption suit which was pending at the time when he borrowed it. The suit was instituted on the 17th April 1905. The vendee of the land sought to be pre-empted was a stranger to the village, and the object of the suit appears to have been to keep the land from getting into the hands of a stranger and doubtless also to increase the family estate. The first Court relying upon the case of *Yakub Khan v. Raghpat Rai and another* (1) held that this sum was raised for a necessary purpose. The learned District Judge on the other hand quoted *Sobha Singh v. Kishore Chand* (2), in which it was held that advances made to agricultural proprietors on the security of ancestral land to provide them with funds to fight out speculative suits for pre-emption can under no circumstances be regarded as incurred for legal necessity. It is contended on behalf of the appellant that the facts of the present case are dissimilar from those of the case reported in *Sobha Singh v. Kishore Chand* (2) inasmuch as the pre-emption suit brought by Jowala Singh in 1905 was not a speculative one. A reference to the record of that suit shows that on the 19th May 1905 the vendee filed his written pleas in which he admitted the plaintiffs' right of pre-emption. The only contest was in regard to the price. The money was borrowed for payment into Court on the 10th June 1905 and at the time when it was borrowed it could not be said that the suit was a speculative one, inas-

(1) 165 P. W. R. 1912.

(2) 65 P. R. 1907.

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