APPELLATE CIVIL.

Before Jai Lal and Dalip Singh JJ.

THAKAR DAS (DEFENDANT) Appellant

versus

FATEH MOHAMMAD AND OTHERS (PLAINTIFFS)
RAM CHAND AND OTHERS (DEFENDANTS) } Respondents.

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Civil Appeal No. 2679 of 1923.

Punjab Pre-emption Act, I of 1913, section 15 (c) firstly —Chakdar Kasurkhwars—*whether "inferior proprietors"—within the meaning of the section.*

Held, that *Chakdar Kasurkhwars* are inferior proprietors within the meaning of section 15 *(c) firstly* of the Punjab Pre-emption Act, 1913.

Nawab Mahomed Surfuraz Khan v. *Dewa Mull* (1), and *Muckdoom Shah* v. *Oomur Ali* (2), referred to.

First appeal from the decree of Lala *Devi Dayal* Dhawan, *Senior Subordinate Judge, Multan, dated the 5th October 1923, decreeing the plaintiffs' claim.*

BADRI DAS, SHEO NARAIN, M. L. PURI and S. L. PURI, for Appellant.

MUHAMMAD SHAFI, NUR-UD-DIN, and GHULAM MOHAY-UD-DIN, for Respondents.

The judgment of the Court was delivered by—

JAI LAL J.—This appeal is by the defendant-vendee from a decree for pre-emption passed against him in favour of four different claimants who claimed to pre-empt different parts of the land purchased by him by means of a sale-deed, dated the 6th of August 1919, for Rs. 45,000. Four suits were filed by the claimants in respect of that portion

(1) 34 P. R. 1868. (2) 44 P. R. 1870

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of the land sold to which they claimed a right of pre-emption. It was alleged in each of the suits that Rs. 45,000 was not fixed in good faith nor was it paid, and that the market value of the land was Rs. 11,800. The vendee pleaded in the trial Court that the plaintiffs had not a right to pre-empt the sale and that Rs. 45,000 was actually paid by him and was fixed in good faith. The learned Senior Subordinate Judge has held that the plaintiffs were entitled to pre-empt the sale and that Rs. 45,000 was actually paid and was fixed in good faith. He has, therefore, decreed the suits on payment of the proportionate amounts calculated on the area decreed in favour of each set of plaintiffs with due regard to the quality of the land.

The vendee appeals to this Court principally on the ground that the plaintiffs had no right to pre-empt the sales. Four different appeals have been filed by him and they will all be disposed of by this judgment. The plaintiffs-respondents, Fateh Mohammad, etc., have filed a cross-appeal alleging that the amount decreed to be paid by them is much in excess of what it should have been. The other plaintiffs, except in one case, have, it seems, filed appeals in the Court of the District Judge of Multan on the same ground as in the cross-appeal by Fateh Muhammad, etc., filed in this Court, but no steps have been taken by the parties to have those appeals transferred to this Court and we did not consider it proper to delay the disposal of the appeals before us by passing an order of transfer in respect of those appeals. Our judgment, therefore, shall not directly affect the appeals pending in the Court of the District Judge.

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It further appears that one set of the plaintiffs have not paid the amount ordered to be paid by them in Court within the time fixed by the Senior Subordinate Judge and therefore the decree in their favour has become void. Before us the only respondents, who were represented, were Fateh Muhammad, etc., plaintiffs in Suit No. 218, before the Senior Subordinate Judge; they are respondents in appeal No. 2679 of 1923, and appellants in appeal No. 297 of 1924, in this Court. The appeals have consequently been heard in the absence of the remaining plaintiff-respondents.

The most important question to be decided in the appeal by the defendant-vendee is whether the plaintiffs Fateh Muhammad, etc., have the right to pre-empt the sale. The sale in question was by the *Malik Malguzar* of the land in suit, while the pre-emptors are *Chakdar Kasurkhwars* in that portion of the land which they respectively seek to pre-empt. and it is by virtue of their being *Chakdar Kasurkhwars* that they claim a right of pre-emption. The claim is made under clause (*c*) of section 15 (1) of the Punjab Pre-emption Act which confers a right on an inferior proprietor to pre-empt a sale of superior proprietary rights by the superior proprietor and *vice versa*. The question, therefore, that we have to determine is whether a *Chakdar Kasurkhwar* is an inferior proprietor within the meaning of section 15 of the Pre-emption Act.

This description of the tenure is peculiar to the Multan and the adjoining districts and does not prevail in this Province generally. The appellants' contention is that a *Chakdar Kasurkhwar* is really an occupancy tenant of the land and as such is not

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entitled to pre-empt the sale of the *malkiyat malguzari* rights in the land. The respondents' contention, on the other hand is that *Chakdar Kasurkhwar* is a sort of an *Adna Malik*, in fact it seems to have been claimed before the trial Court that he was actually an *Adna Malik* while the *Malik Malguzar* was an *Ala Malik*. It is not necessary for us to decide whether a *Chakdar Kasurkhwar* is actually an *Adna Malik* as that tenure is understood in this Province, because it seems to us that the plaintiffs would be entitled to a decree even if we held that they are some sort of inferior proprietors in the land sought to be pre-empted by them and are not merely occupancy tenants. It is, therefore, necessary to consider the real nature of their tenure.

It appears that so far back as 1860 there was a dispute between the predecessors-in-interest of the vendors in the present case and the predecessors-in-interest of the pre-emptors with regard to their respective rights in the entire area of which the land in suit is a part. *Nawab* Sarfraz Khan, who was the Jagirdar of the village, claimed to be the *Malik Malguzar* of the land while the *Chakdar Kasurkhwars* claimed the right to be entered in the revenue records as owners of the land. It was finally decided by the Financial Commissioner that the *Nawab* was the *Malik Malguzar* and that the other party were entitled to be entered only as *Chakdar Kasurkhwars*. Their claim to be entered as owners *to the exclusion of the Nawab* was negatived.

It is not necessary for us to set out in detail the various stages of the litigation on that occasion as the several orders then passed by the Financial Commissioner are printed at pages 52 to 61 of the printed

paper book. One of these orders relates to the right of the *Chakdar Kasurkhwars* to cut the trees on their holdings and it was held that such a right could only be exercised with the permission of the *Malik Malguzar*, but the latter was not entitled to withhold permission arbitrarily and his action could be controlled by the Courts if he did so. Considerable reliance was placed before us by the appellants on these decisions and at one time it was contended that they operated as a bar to the plaintiffs' claim that the *Chakdar Kasurkhwars* were inferior proprietors. This does not, however, appear to have been the vendee's case in the trial Court and, when questioned whether he definitely contended that the plaintiffs were precluded from asserting their claim by reason of *res judicata*, the learned counsel did not stick to this assertion. We are of opinion that the final orders passed in the years 1860 to 1863 and referred to above do not conclude the question, nor do they directly affect it, as on that occasion the dispute between the *Jagirdars* and the *Chakdar Kasurkhwars* related to the right of being treated as owners of the land to the exclusion of the other party. Each claimed that he was the *original* owner of the land and that the other party had been introduced later as a *Jagirdar* in one case and *Chakdar Kasurkhwar* in the other, and was not therefore entitled to be recorded as the owner of the land and the real nature of the tenure of *Chakdar Kasurkhwar* was not before the Court on that occasion. Some remarks made in the orders of the Financial Commissioner no doubt throw some light on the question of the nature of the tenure of the plaintiffs, but we do not consider it necessary to base our decision on such remarks, because in our opinion there is other more reliable material

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which affords guidance in the decision of the question.

In a case reported as *Nawab Mahomed Surfuraz Khan* v. *Dewa Mull* (1), the question as to the nature of the tenure of a *Chakdar* arose before the Chief Court of the Punjab and certain observations of the learned Judges then made may with advantage be quoted here. In that case, it may be mentioned, the dispute between the *Malik Malguzar* and the *Chakdar* related to the right of repairing existing wells and of replacing them by new ones. Both parties claimed this right to the exclusion of the other and it was held that the right vested in the *Chakdar* and not in the *Malik Malguzar*. After citing the previous decisions of the Financial Commissioner referred to above and other documents the learned Judges observed as follows :—

"Now the plaintiff in this case both according to the Settlement Officer's definition of the *Chakdaree* tenures, and the Financial Commissioner's decision determining his rights, is an intermediate holder between the *Zamindar* and the cultivator; he possesses a heritable and transferable property in the well, and he cultivates the land himself either by his own oxen, or his own cultivators."

"But whereas a *Chakdar* in this position would ordinarily pay his own revenue to Government direct, and be alone responsible therefor to the exclusion of the *Zamindar*; the latter, instead of the *Chakdar* has alone been allowed by the Financial Commissioner's decision to engage with Government for the payment of its revenue in this village."

(1) 34 P. R. 1868.

"The effect of this, however, is not to deprive the *Chakdar* of the ownership of his well or of the right of arranging for the cultivation. The *Zamindar* and *Malguzar* is only entitled to collect the Government revenue and his fixed fee from the *Chakdar* * * *. In fact while the *Zamindar* is the owner of the soil, the *Chakdar* is the owner of the well, and in the present case being in possession, he also enjoys the right of arranging for the cultivation."

Again the question came before the Chief Court of the Punjab in another case which is reported as *Muckdoom Shah* v. *Oomur Ali* (1), and it was held that in the Multan District where *Chakdari* tenure prevails, the co-sharers in a well have the right of pre-emption as to the shares in that well, in preference to the general proprietor of the village, who has no share in the well, but merely receives a *haq zamindari* payable by the *Chakdars*.

It may be incidentally mentioned that the expression "well" does not mean actually what is ordinarily understood by it, that is to say, the structure constructed as a contrivance for the raising of water, but it also includes the land which is attached to the well and is irrigated by it.

It thus appears that in *Muckdoom Shah* v. *Oomur Ali* (1), the right of the *Malik Malguzar* to pre-empt the sale of a share in the well in preference to a *Chakdar* was negatived.

The history of the *Chakdari Kasurkhwari* tenure is to be found in paragraphs 165 to 171 of Douie's Settlement Manual, but we do not propose to quote extracts from that book. It would be sufficient to

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say that from what is stated there it appears that a *Chakdar Kasurkhwar* is a sort of an inferior proprietor. In the glossary of Vernacular words given at the end of the Manual, a *Chakdar* is stated to mean "an inferior owner in south-west Punjab," while "*Kasur*" is stated to be "fee paid in recognition of proprietary title." A *Kasurkhwar* means a person who is in receipt of *Kasur*. It is, therefore, obvious that if the meaning of *Kasur* is as stated in Douie's Settlement Manual and we have no reason to think that it is not, then a *Kasurkhwar* means a person who receives a fee in recognition of proprietary title; in other words, one who receives a share of the proprietary dues which are ordinarily payable by a cultivator of the land to the *Malik Malguzar*. An account of this tenure in the Gazetteer of the Multan District is given as follows :—

"The settlers introduced by the State, or by the *Zamindar* himself, into a *Zamindar's* village, are known as *Chakdars*. The name is also applied to those proprietors of the *Zamindar's* tribe who have continued to pay the *Hakk Zamindari* or *Mukaddimi* to their chief or chief's family, and it is sometimes even extended to settlers who have sunk wells under direct permission of the State in tracts where there has never been any one to claim a *Zamindari* due. Thus when *Diwan* Sawan Mal made his new canal, the Diwanwah, through the Mailsi bar, he gave direct grants to settlers, proclaiming at the same time that if any one could establish a claim to *Zamindari* it should be allowed; no such claim was established, but still the settlers were generally described as *Chakdars*. The supposed connection of the name with the wood work of the well and the

payment of the *Zamindari* gave rise to the idea that the *Chakdar* owned the well only in fact that he was a capitalist who had sunk a well for the *Zamindar* who remained the true owner of the soil, and could buy out the *Chakdar* on repaying him the money expended. This idea was still further encouraged by the fact that the *Chakdar* sometimes did not cultivate himself, but let his well to tenants, and it occasionally happened that the tenant was one of the old *Zamindars*. There was consequently rather a tendency at the commencement of our Summary Settlements to regard the *Chakdar* as an interloper who, by the power of money, was ousting the old family from its original rights. But this was quite a mistake; the *Chakdar* whether he got his title from the *Zamindar* direct or through the State, always held his land in full proprietary right, subject only to the payment of a quit rent in the shape of the *Hakk Zamindari*. Of course, if he abandoned his land it reverted to the *Zamindar*, but this was because the latter was the owner of all the waste land and not in virtue of any contract entered into at the time of purchase. On the other hand any right of cultivation enjoyed by the *Zamindar* was acquired by a distinct contract between him as tenant on the one side and the *Chakdar* as proprietor on the other; the terms of the contract might vary from that of a tenancy-at-will on a full rent to that of a permanent occupancy on a quit rent, but the original rights of the *Zamindar* in no way influenced his position as tenant."

It is unnecessary for us to go any further into the history of this tenure. In our opinion there can be no manner of doubt that a *Chakdar Kasurkhwar*

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is an inferior proprietor in respect of the land held by him and this view is further strengthened by two important circumstances; first, that it is possible for a *Malik Malguzar* to become a cultivator of the land under the *Chakdar Kasurkhwar* and in that case, in his capacity of a cultivator, he has to pay the usual dues in kind to the *Chakdar Kasurkhwar*. It is obvious that the *Chakdar Kasurkhwar* cannot under those circumstances be described merely to be a cultivator under the *Malik Malguzar*. Moreover, in the current settlement record and in the *Jamabandi* entries both the *Malik Malguzar* and the *Chakdar Kasurkhwars* are entered under the column of proprietorship, while the cultivators are entered in a different column meant for that purpose. We have, therefore, no hesitation in agreeing with the conclusion of the learned Senior Subordinate Judge that the respondents are inferior proprietors and as such are entitled to maintain a suit for pre-emption of the sale concerned.

Two other points were taken by the appellants' counsel. One was that no right of pre-emption extends in respect of land which is entered in the revenue records as *Mahazi Malikan*. It appears that there is some waste land which has not yet been appropriated for purposes of cultivation and according to the rules, the owner, who personally or by cultivators is in possession of any portion of the cultivated land, has a preferential right to appropriate the waste land which adjoins such cultivated land. The entire area, which adjoins the cultivated lands is, therefore, entered as *Mahazi Malikan*. We are unable to see how a different rule regarding the right of pre-emption can apply to this area which must be

held to be an appendage to the cultivated area and no cogent reason has been shown to us why this area should not be treated in the same way as the adjoining cultivated area.

Another point taken was that no right of pre-emption exists in respect of the date trees, but the learned counsel when arguing the appeal expressly abandoned this contention.

Turning now to the appeal by the plaintiffs Fateh Muhammad, etc., the only contention raised before us was that the learned Senior Subordinate Judge should have made further enquiry as to the apportionment between the claimants of the price paid by the vendees to the vendors. It seems that in order to determine the market value of the entire land, a Commissioner was appointed by the trial Court and he submitted a report valuing the land sold at a figure much less than Rs. 45,000. He also valued the lands which were the subject matter of the four suits separately. The Senior Subordinate Judge has utilised that report for the purpose of apportioning the sale price to be paid by various pre-emptors. Counsel contends that another Commissioner should have been appointed for the purpose, but we asked the learned counsel to put his contention in a concrete form by calculating the total pre-emption price which should according to him have been paid by him, assuming that Rs. 45,000 was actually paid for the entire area as held by the trial Court which finding was not attacked before us. He made various calculations, but in each case the price calculated by him exceeded the amount which the learned Senior Subordinate Judge has ordered him to pay. It consequently follows that there is no use in remanding

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the case as claimed by the pre-emptors Fateh Muhammad, etc., as it has not been shown that they have suffered by the mode of calculation adopted by the trial Judge. In our opinion, there is no force in this appeal also. As a result we dismiss appeals Nos. 2679 of 1923 and 2037, 2038 and 2039 of 1924 with costs preferred by the defendants-vendees, *Chaudhri* Thakar Das, etc., and appeal No. 297 of 1924 preferred by Fateh Muhammad, etc., pre-emptors with costs.

A. N. C.

Appeals dismissed.

APPELLATE CIVIL.

Before Shadi Lal C. J. and Jai Lal J.

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Dec. 18.

LADHA (PLAINTIFF) Appellant

versus

MUSSAMMAT SARDAR BIBI AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 2621 of 1926.

Custom—Succession—Self-acquired property—Sister or collaterals of 7th degree—Khokhar Rajputs *of village Khanpur*, Tahsil *and District Lahore*—Riwaj-i-am.

Held, that among *Khokhar Rajputs* of village Khanpur, *Tahsil* and District Lahore, a sister excludes collaterals of the 7th degree in the matter of succession to self-acquired property.

Second appeal from the decree of Rai Sahib Lala *Topan Ram, Additional District Judge, Lahore, dated the 23rd of April 1926, reversing that of* Sheikh *Muhammad Akbar, Subordinate Judge, second class, Lahore, dated the 23rd of December 1925, and dismissing the plaintiff's suit.*