

## APPELLATE CIVIL.

*Before Rangī Lal J.*

SOLAKHAN SINGH (JUDGMENT-DEBTOR)

Appellant

*versus*

SUNDAR SINGH (DECREE-HOLDER) Respondent.

Civil Appeal No. 1356 of 1933.

*Punjab Pre-emption Act, 1 of 1913, sections 11, 22: Amount deposited in Court—whether attachable—after dismissal of the pre-emption suit.*

*Held*, that under section 11 of the Punjab Pre-emption Act a sum deposited in, or paid into, Court by a pre-emptor under the provisions of the Act or the Civil Procedure Code cannot be attached while it is in the custody of the Court, even after the dismissal of the pre-emption suit.

*Mohna Mal v. Tulsi Ram (1)*, distinguished.

*Miscellaneous appeal from the order of R. B. Lala Jaswant Rai, District Judge, Gujranwala, dated 1st June, 1933, reversing that of Sheikh Feroz-ud-Din Qureshi, Subordinate Judge, 2nd Class, Gujranwala, dated 28th February, 1933, and directing that the money deposited by the appellant shall be attached in execution of his decree.*

BODH RAJ SAWHNEY, for Appellant.

Respondent, in person.

RANGI LAL J. RANGI LAL J.—The question of law involved in this case is whether the amount deposited under section 22 of the Punjab Pre-emption Act by a pre-emptor can be attached in execution of a decree against him after the pre-emption suit has been dismissed. The learned District Judge has held on the analogy of *Mohna Mal v. Tulsi Ram (1)* that it can be

attached because the deposit is made for the protection of the vendee and after the dismissal of the suit the vendee has no interest left in the money. That decision was given under section 15 of the Redemption of Mortgages Act, which runs as follows:—

“ No sum deposited with the Collector by a petitioner under the provisions of this Act shall be attached by any Court or Revenue Officer.”

In the present case the point for consideration is whether the attachment is allowed by section 11 of the Punjab Pre-emption Act. That section lays down that no sum deposited in or paid into Court by a pre-emptor under the provisions of this Act or the Code of Civil Procedure shall *while it is in the custody of the Court* be liable to attachment in execution of a decree or order of a Civil, Criminal or Revenue Court or of a Revenue Officer. The words ‘ while it is in the custody of the Court ’ which do not appear in section 15 of the Redemption of Mortgages Act make the present case distinguishable from *Mohna Mal v. Tulsi Ram* (1). It is true that the reasoning used by the learned Judges in deciding that case applies to the present case also, but the language of section 11 of the Pre-emption Act seems to me to be imperative and this being so, it is not open to the Courts to consider the intention of the Legislature. It will be doing violence to the language of the statute if it is held that the amount in question could be attached while it was in the custody of the Court after the pre-emptor’s suit had been dismissed. There is no direct authority in support of the contention of the respondent and there is to my mind no justification for ignoring the clear and unambiguous language of the section.

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I, therefore, accept the appeal and declare that the amount was not attachable in execution of the decree against the appellant. Under the circumstances I leave the parties to bear their own costs throughout.

C. H. O.

*Appeal accepted.***APPELLATE CIVIL.***Before Dalip Singh and Bhide JJ.*

DIWAN CHAND AND OTHERS (DEFENDANTS)

Appellants

*versus*

MANAK CHAND (PLAINTIFF)	} Respondents.
MAULA BAKHSH (MORTGAGOR)	
AND OTHERS (DEFENDANTS)	

Civil Appeal No. 871 of 1931.

*Provincial Insolvency Act, V of 1920, section 28 (4) : Property devolving upon the insolvent after adjudication and before his discharge—vests in the Official Receiver—Mortgage of this property by insolvent before his discharge—whether valid and whether mortgagee entitled to enforce his mortgage after mortgagor's discharge—Transfer of Property Act, IV of 1882, section 43 : Mortgage of undivided share of joint property—Mortgagee's right to proceed against the share allotted to the mortgagor on partition.*

This was a suit for recovery of the mortgage-money due on a mortgage of certain house-property effected by one M.B. in favour of plaintiff, dated 27th December, 1922. The property mortgaged was a portion of the estate left by S.D. the grandfather of M.B. (who died on 15th March, 1919), to which M.B. and some others, were the heirs. Partition of this property was effected under an award of arbitrators, dated 26th May, 1924. M.B. was a party to the arbitration proceedings. M.B. was adjudged insolvent in 1916 and was not discharged till 1927.