LETTERS PATENT APPEAL.

Before Addison A. C. J. and Din Mohammad J.

1935

June 18.

SHAH MOHAMMAD (PLAINTIFF) Appellant

versus

MST. PAIRI AND OTHERS (DEFENDANTS) Respondents.

Letters Patent Appeal No. 34 of 1935.

Punjab Pre-emption Act, I of 1913, section 15 (c) : "Owner of the estate"—whether includes the owner of a plot of land within municipal limits of a town (which was once agricultural land but was afterwards built upon) — and entitles him to pre-empt the sale of agricultural land within those limits.

Held, that the owner of a plot of land situate within the municipal limits of a town, which was once agricultural land and which was afterwards built upon and became urban immovable property, can no longer be deemed to be an "owner of the estate" within the meaning of section 15 (*c*), *thirdly*, of the Punjab Pre-emption Act, so as to be entitled to pre-empt the sale of agricultural land situate within the same municipal limits, notwithstanding that the land is still assessed to land revenue and is shown in the revenue papers as bearing a separate *khasra* number.

Chanan Din v. *Chanan Din* (1), distinguished and disapproved in part.

Salamat Rai v. *Kanshi Ram* (2), and *Fakir Mohammad* v. *Kala Khan* (3), distinguished.

Narain Singh v. *Gopal Singh* (4), relied upon.

Other case-law, discussed.

Letters Patent Appeal from the decree passed by Monroe J. in C. A. No.428 of 1934, on the 8th January, 1935, affirming that of S. S. Sardar *Hukam Singh, District Judge, Multan, dated 22nd December, 1933, who affirmed that of* Lala *Mulk Raj*, Bhatia

(1) 1933 A. I. R. (Lah.) 213.
(2) 30 P. L. R. 1918.
(3) 1933 A. I. R. (Pesh.) 33.
(4) 106 P. R. 1913.

Junior Subordinate Judge, Multan, dated 7th August 1933, dismissing the plaintiff's suit.

GHULAM MOHY-UD-DIN and SHABBIR AHMAD, for Appellant.

MEHR CHAND MAHAJAN and NAZIR AHMAD, for Respondents.

The judgment of the Court was delivered by—

DIN MOHAMMAD J.—This is a Letters Patent Appeal from the judgment of Monroe J.

The sole question for determination in this case is whether an owner of a plot of land, which was once agricultural land situated within the municipal limits of a town, and was afterwards built upon, can still be deemed to be an " owner of the estate " within the meaning of section 15 (*c*), *thirdly*, of the Pre-emption Act, so as to be entitled to pre-empt the sale of agricultural land situated within the same limits. The trial Judge found that the plaintiff could not pre-empt in these circumstances, and both the District Judge and the learned Judge of this Court have concurred in this finding.

The answer to this question is not so easy as it appears to be at first sight. It is contended on behalf of the appellant that by merely building upon a piece of land which used to be agricultural land before, but which, in spite of the building, is still assessed to land revenue and is shown in the revenue papers as bearing a separate *khasra* number, its owner does not cease to be an owner of the estate, even though the land itself ceases to be agricultural land and assumes the character of " urban immovable property." The respondent, on the other hand, maintains that the term " owner of the estate " as used in section 15 of

1935

SHAH MOHAMMAD v. MST. PAIRI.

the Pre-emption Act imports ownership of agricultural land only and as soon as an area of land, which was admittedly agricultural before, is converted into a building site, it at once ceases to be a part of the estate and its owner, therefore, is deprived of all those privileges which he could otherwise enjoy under the law.

On behalf of the appellant, reliance has been placed on *Salamat Rai* v. *Kanshi Ram* (1), *Chanan Din* v. *Chanan Din* (2) and *Fakir Mohammad* v. *Kala Khan* (3).

In *Salamat Rai* v. *Kanshi Ram* (1), the land in suit was situated within municipal limits, but still remained a part of the estate known as Premgarh village. It was found that the town itself had not extended so far. It was held by a Single Judge of the Chief Court that the locality in question still remained a part of the village and did not become a part of the town. It was on this basis that it was further held that the plaintiff who had purchased a small plot of land assessed to revenue must be regarded as an "owner of the estate" within the meaning of the Pre-emption Act. This authority, therefore, is clearly distinguishable inasmuch as in the present case it is not denied that the land on the basis of which pre-emption is claimed is a part of the town.

In *Chanan Din* v. *Chanan Din* (2), the land on the basis of which pre-emption was resisted was situated within the area of Mozang. The plot though described as *Qabil tamir* (suitable for building) had not yet been built upon. It was also assessed to land revenue. Tapp J. held that "the determining factor in such

(1) 30 P. L. R. 1918. (2) 1933 A. I. R. (Lah.) 213.
(3) 1933 A. I. R. (Pesh.) 33.

cases was whether the area in question was or was not assessed to land revenue. Its extent, situation and the purpose for which it was bought or to which it may be devoted were absolutely immaterial." With all respect, we consider that this is too general a proposition of law to enunciate, as in all such cases it will be necessary to determine where the land on the basis of which the right of pre-emption is claimed or resisted, is situated and to which purpose it has been devoted. Even apart from this, as the plot of land dealt with in that case had not been built upon and had, consequently, not assumed the character of "urban immovable property," this authority will be of no use to us here.

In *Fakir Mohammad* v. *Kala Khan* (1), the land purchased was admittedly situated in a village and so was the land on the basis of which the suit for pre-emption was resisted. That precedent also does not help the appellant.

The respondent, on the other hand, has grounded his contention on the following authorities:—

Sher Ali v. *Kalandar Khan* (2), *Muhammad Ali Khan* v. *Makhan Singh* (3), *Kishan Dial* v. *Ali Bakhsh* (4), *Abdulla* v. *Punnu Ram* (5), *Ghulam Murtaza* v. *Rupa Mal* (6), *Muhammad Din* v. *Shah Din* (7), *Allah Ditta* v. *Muhammad Nazir* (8), *Sham Sundar* v. *Sodhi Harbans Singh* (9), *Narain Singh* v. *Gopal Singh* (10), *Mohammad Said* v. *Shah Nawaz* (11), *Diwan Chand* v. *Nizam Din* (12), *Mussammat Kapuri*

(1) 1933 A. I. R. (Pesh.) 33.
(2) (1923) 73 I. C. 200.
(3) (1923) 73 I. C. 855.
(4) 87 P. R. 1890.
(5) 42 P. R. 1906.
(6) 57 P. R. 1906.
(7) 90 P. R. 1907.
(8) 84 P. R. 1910.
(9) 109 P. L. R. 1908.
(10) 106 P. R. 1913.
(11) (1921) 60 I. C. 580.
(12) 1924 A. I. R. (Lah.) 662.

1935

SHAH MOHAMMAD v. MST. PAIRI.

v *Kanshi Ram* (1) and *Uttam Chand* v. *Khodaya* (2).

The cases of *Sher Ali* v. *Kalandar Khan* (3) and *Muhammad Ali Khan* v. *Makhan Singh* (4) are from Peshawar, and were both decided by Mr. Pipon, J. C. In both it was held that any portion of an agricultural village may lose its character as such and become, by the force of circumstances, a suburb of a town and such a suburb was to be regarded as a sub-division of a town for purposes of pre-emption. This proposition is not denied in the present case. In fact, as stated above, it is admitted that the property on the basis of which pre-emption is claimed has assumed the character of urban immovable property. But if these judgments intend to lay down that no agricultural land can exist within the limits of a town, we are unable to endorse this proposition, as this will clearly go against the definition of urban immovable property as given in section 3 of the Pre-emption Act.

In *Kishan Dial* v. *Ali Bakhsh* (5) the property in dispute consisting of shops and a *chaubara* was situated in a bazaar in the suburbs of Batala. Plaintiffs claimed pre-emption on the ground that they were co-sharers in *Mauza* Faizpur within the boundaries of which the land had been entered at the settlement that had taken place some time before. It was found that the bazaar was built about 1868 on a site which was previously a grave-yard adjoining one of the gates of Batala. In these circumstances, it was held by a Division Bench of the Punjab Chief Court that the property should be regarded as situated in a town. The character of the land in suit before us is

(1) 1927 A. I. R. (Lah.) 799.
(2) 1929 A. I. R. (Lah.) 164.
(3) (1923) 73 I. C. 200.
(3) (1923) 73 I. C. 855.
(5) 87 P. R. 1890.

clearly different from that of the land in the reported case and this authority, therefore, cannot serve as a guide in the determination of the question at issue in the present case.

Both *Abdulla* v. *Punnu Ram* (1) and *Ghulam Murtaza* v. *Rupa Mal* (2) relate to Multan to which place the present suit belongs. In the former case, the subject of consideration was a suburb of Multan City known as Taraf Ravi, and in the latter, was Mohalla Gidarpur which was a part of Bairun Pak-Darwaza, admittedly a sub-division of the city of Multan. Beyond proving that certain suburbs had lately sprung up outside the walled limits of Multan, these authorities do not lay down anything which can help us in the disposal of the present case.

In *Muhammad Din* v. *Shah Din* (3), it was conceded that the quarter known as Killa Gujar Singh even to that day constituted a village and contained a village community. It was also found that within its boundaries there existed a fairly large area of agricultural land which was assessed to land revenue and there were also " the ordinary village *abadi*, the ordinary village proprietary body, the ordinary village officers, a record-of-rights, etc." It was also admitted that Killa Gujar Singh in part retained its former character as a village community. It was, however, held that the land then in suit had for some time past become part and parcel of Lahore City and had lost its character of agricultural land. This judgment does help the respondents to some extent inasmuch as it lays down that even if agricultural land exists in an estate, it is possible for some part of that

(1) 42 P. R. 1906. (2) 57 P. R. 1906.
(3) 90 P. R. 1907.

1935

SHAH MOHAMMAD v. MST. PAIRI.

estate to lose that character or to assume that of urban immovable property.

In *Allah Ditta* v. *Muhammad Nazir* (1), the *abadi* under consideration was the *abadi jadid* of the old village of Garhi Awan, a suburb of Hafizabad. It was held in that case that the *abadi jadid* must be looked upon as a sub-division within the meaning of the Punjab Pre-emption Act. It is not clear from the judgment, however, whether the site sold was assessed to land revenue or not. This authority, therefore, cannot serve as a good precedent in the case before us.

Similarly, in *Sham Sundar* v. *Sodhi Harbans Singh* (2), which was considered in *Chanan Din* v. *Chanan Din* (3), the land on which the claim was based was not assessed to revenue.

In *Narain Singh* v. *Gopal Singh* (4), the pre-emption suit was in respect of house property in a village. Neither the vendor nor the vendee was a member of the village proprietary body or had any status in the village otherwise than as a house-holder. The pre-emptor was a *Jat* proprietor and his claim was resisted on the ground that the vendee was an owner of the estate and in these circumstances, his right was equal to that of the pre-emptor. The claim was, however, decreed. On appeal a Division Bench of the Chief Court made the following observations :—

"It appears to us quite impossible to give a strained interpretation to the term 'owner of the estate' as including owners of houses in the *abadi*, merely because the *abadi* may be technically part of the estate. We entertain no doubt that the law was intended to exclude mere house-holders, and we do not

(1) 84 P. R. 1910.
(2) 109 P. L. R. 1908.
(3) 1933 A. I. R. (Lah.) 213.
(4) 106 P. R. 1913

even think that a pedantically literal construction of the words ' owner of the estate ' would justify an extension or application of the term in a manner which is so clearly opposed to the whole principle upon which the Pre-emption Act is based. To justify such construction we should have to read the words ' owner of the estate ' as synonymous with the words ' owner in the estate ' and we have no authority for doing so. We think that the proper view is to take the words used in their generally accepted meaning, as understood in Revenue literature and as connoting exclusively what is usually described as the proprietary body of the village."

We are in respectful agreement with this view and these observations will apply with much greater force to the case before us, as here the land, on the basis of which the right of pre-emption is claimed, is not even village immovable property, but urban immovable property.

In *Mohammad Said* v. *Shah Nawaz* (1), a single Judge of this Court held that the mere fact that a plot of land is assessed to land revenue would not make it agricultural land, unless it is proved that the plot is occupied or let for agricultural purposes or for purposes subservient to agriculture. To the same effect is *Uttam Chand* v. *Khodaya* (2). This proposition, as has been remarked above, is not denied by the appellant.

In *Diwan Chand* v. *Nizam Din* (3), a Division Bench of this Court held that the expression " village " connotes ordinarily an area occupied by a body of men mainly dependent upon agriculture or occupations subservient thereto. It was further observed

(1) (1921) 60 I. C. 580. (2) 1929 A. I. R. (Lah.) 164.
(3) 1924 A. I. R. (Lah.) 662.

1935

SHAH MOHAMMAD v. MST. PAIRI.

that the reported cases contained many instances of rural areas in the vicinity of a town which had ceased to be rural and grown into a suburb of the town, and that such areas had been held to be governed by rules applying to urban properties. These remarks were quoted with approval in *Mussammat Kapuri* v. *Kanshi Ram* (1), but in neither of the two cases is it clear that the land in suit was assessed to land revenue. We may remark in connection with these judgments that in excluding the possibility of the existence of agricultural land within the limits of towns they go beyond the scope of the Pre-emption Act.

The above analysis of the authorities cited on either side indicates that the trend of authority is in favour of the respondents. Even under the general scheme of the Act, the position maintained by them appears to us to be sound in law. The law of pre-emption deals with three kinds of immovable property, *viz.* agricultural land, village immovable property and urban immovable property. These terms have been defined in section 3 of the Pre-emption Act. "Urban immovable property" means immovable property within the limits of a town, other than agricultural land. "Village immovable property" means immovable property within the limits of a village, other than agricultural land. "Agricultural land" means land as defined in the Punjab Alienation of Land Act, 1900. While dealing with the Pre-emption Act, therefore, we are concerned with these kinds of immovable property only, namely, (*a*) immovable property situated in a town, (*b*) immovable property situated in a village, and (*c*) agricultural land wherever it may be situated. Section 15 provides for the

(1) 1927 A. I. R. (Lah.) 799.

right of pre-emption in respect of agricultural land and village immovable property, and section 16 deals with this right in respect of urban immovable property. This separate treatment of urban immovable property indicates to some extent that it was intended by the Legislature to be placed on a different basis from the other two classes of property. Moreover, the word ' estate ' as defined in the Punjab Land Revenue Act, in our opinion, applies to agricultural lands only and does not include any other class of property. As soon as agricultural land is converted into building sites, whether in a village or in a town, its owner, so to say, walks out of the estate and ceases to have any connection with it any longer. He establishes a new character for his possession and is, therefore, to be treated on that basis. To hold otherwise will be to go against the spirit of the Pre-emption Act.

In these circumstances, we hold that the plaintiff being an owner of urban immovable property was not entitled to pre-empt the sale of agricultural land within the limits of the Multan town. We, therefore, affirm the decision of the learned Judge of this Court and dismiss this appeal.

In view of the peculiar circumstances of the case, we make no order as to costs before us.

P. S.

Appeal dismissed.