

APPELLATE CIVIL.

Before Addison and Din Mohammad JJ.

KIDAR NATH AND OTHERS (DEFENDANTS)

Appellants

versus

BAGH SINGH (PLAINTIFF)

KARTAR SINGH AND ANOTHER
(DEFENDANTS)

} Respondents.

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Oct. 9.

Civil Appeal No. 73 of 1936.

Punjab Pre-emption Act, I of 1913, section 14: Agriculturists selling their land to non-agriculturists — right of a member of the alienor's tribe — whether superior to that of the vendees — Waiver — what amounts to.

Some agriculturists sold their land to non-agriculturists. Another member of the same agricultural tribe in the same *Mauza* instituted a suit for possession by pre-emption of that land. The vendees pleaded that they could resist the plaintiff's right of pre-emption on the ground of their being *Khewatdars* in the village and also that the plaintiff had waived his right, if any.

Held, that according to section 14 of the Punjab Pre-emption Act, the right of a member of an agricultural tribe is superior to that of a non-agriculturist-vendee, in the case of a sale of land by an agriculturist.

Mahmud v. Nur Ahmad (1), and *Thakur Das v. Sohawa Singh* (2), relied upon.

Held further, that in order to deprive a person of any legal right that he possesses, there must be clear and cogent evidence on the record justifying that course, and the mere oral statements of a few witnesses deposing to certain circumstances from which it might be inferred that the prospective pre-emptor had knowledge of the sale, would not be enough to prove that he had actually relinquished the enforcement of his right.

First appeal from the decree of Mr. S. S. Dulat, Additional District Judge, Ferozepore, dated 31st

(1) 101 P. R. 1907.

(2) 23 P. R. 1908.

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January, 1936, awarding the plaintiff possession of the land in suit on payment of the price, etc.

BADRI DAS, ACHHRU RAM and INDER DEV DUA.
for Appellants.

MEHR CHAND MAHAJAN and DEV RAJ SAWHNEY.
for Respondents.

The judgment of the Court was delivered by—

DIN MOHAMMAD J.—On the 22nd February, 1933, Kartar Singh and Gulzar Singh, Jats of *Mauza Moga Mahla Singh*, sold 22 *kanals* and 11½ *marlas* of land to Kidar Nath, Shiv Dat Rai and Rameshar Das, Aggarwals of the same place for Rs.2,428. On the 20th February, 1934, Bagh Singh another Jat proprietor of the same *mauza*, instituted a suit for possession by pre-emption of the land on the ground that he, being a member of an agricultural tribe, had a preferential right over the vendees who were non-agriculturist Mahajans. He challenged the price also but with that aspect of the case we are not concerned in this appeal.

The vendees raised various pleas. Among other grounds, it was contended that the plaintiff's right of pre-emption was not superior to that of the vendees, inasmuch as they were also *khewatdars* in the village, that the plaintiff had waived his right, that the plaintiff's conduct barred the present suit and that the vendees had effected improvements to the value of Rs.2,900. They further added that the land had been purchased for charitable purposes and that that fact also operated as a bar to the present suit. The trial Judge framed the following issues:—

“(1) Whether the plaintiff has a right of pre-emption as against the vendees ?

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(2) Whether the sum of Rs.300 in dispute was actually paid?

(3) What is the market value of the land in suit?

(4) Whether the plaintiff has lost his right to sue?

(5) Whether any improvements have been made and whether the defendants are entitled to claim the cost of those improvements? If so, what is the cost of the improvements?

(6) Whether the purchase was made for building a *dharamsala* and hence no suit for pre-emption is competent? "

Issues Nos.2 and 3 were given up by the plaintiff and hence they were decided against him. On issue No.1 the finding of the trial Judge was that the right of the plaintiff was superior to that of the vendees. On issue No.4 the trial Judge came to the conclusion that waiver had not been established. So far as improvements were concerned, a sum of Rs.2,186 was allowed to the vendees. The balance of Rs.314 was disallowed, which was claimed as the price of some parallel and horizontal bars fixed in the ground, as well as of a few benches that were placed there, a hand pump that was put up there for drawing drinking water and a few fruit trees that had been planted there. Issue No.6 was also decided against the vendees, inasmuch as section 5 of the Pre-emption Act was held inapplicable to the case. The vendees have appealed.

The main contentions raised on behalf of the vendees before us are that they can resist the plaintiff's right of pre-emption and that the plaintiff had waived his right, if any.

We take up first the question whether the plaintiff could under the law oust the vendees. The plaintiff

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relies on section 14 of the Pre-emption Act which reads as follows :—

“ No person other than a person who was at the date of sale a member of an agricultural tribe in the same group of agricultural tribes as the vendor shall have a right of pre-emption in respect of agricultural land sold by a member of an agricultural tribe.”

The plain language of the section clearly helps the plaintiff; but counsel for the appellants has contended that this section does not debar the vendees from resisting the plaintiff's claim on the ground that they are proprietors in the estate and thus claim an equal right with the pre-emptor. He has urged that the section is intended to apply to pre-emptors who appear in Court as plaintiffs and not to the vendees who are impleaded as defendants. This is obviously wrong. So long ago as 1907 this question was exhaustively discussed by a Division Bench of the Punjab Chief Court with reference to section 11 of the old Pre-emption Act and it was laid down that a member of the alienor's tribe had a preferential right of pre-emption in respect to a sale of agricultural land by a member of an agricultural tribe to that of a vendee who, though an agriculturist, was not a member of an agricultural tribe—see *Mahmud v. Nur Ahmad* (1). In the course of their judgment the learned Judges observed as follows :—

“ It is true that the Punjab Alienation of Land Act justified a sale in favour of an agriculturist by a member of an agricultural tribe, and the sale therefore in the present case by a vendor to a vendee who is an agriculturist is legal and valid. But a right of pre-emption is primarily and essentially a right of

priority to buy, and such right, under such circumstances, is conferred by law on a member of the agricultural tribe only and not upon a mere agriculturist. A right of pre-emption is a legal right, such as need not be exercised at all. If therefore no suit to enforce the right were instituted, the vendee would be competent to retain his sale. But if a member of the agricultural tribe elects to exercise his prior right to buy, the law says he shall be entitled to exercise it."

The same principle was re-affirmed by another Division Bench of the Punjab Chief Court in *Thakur Das v. Sohawa Singh* (1). We are in complete accord with the principle enunciated above. By section 4 of the Pre-emption Act the right of pre-emption is said to mean the right of a person to acquire agricultural land * * * in preference to other persons, and if a man vested with this right chooses to exercise it, the vendee who has already purchased the land cannot obviously resist it, if his right is not on a par with the right of the person claiming the land. Counsel for the appellants has urged that this interpretation of section 14 will work hardship on the non-agriculturists in certain cases, but sitting here as a Court of law we are concerned neither with the policy of the administration, nor with the effect of a piece of legislation on any section of the society. We have to administer the law as we find it, and we cannot twist the clear language of any enactment to avoid the real or imaginary hardships in which it may result. The plaintiff being a member of the same agricultural tribe as the vendors could under the law deprive the vendees (who are non-agriculturists) of the agricultural land they had purchased, and if he elects so to do, no Court can stand in his way.

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There now remains the question of waiver to be considered. In this respect the vendees have led evidence to show that the plaintiff had taken an active part in the negotiations relating to this sale, that he had sold some bricks which were used in the construction of a well sunk in this ground, and that he had watched the construction of the buildings that had been raised on the land without any objection or protest, and consequently he had abandoned his right and was even otherwise estopped from enforcing it. We have examined the evidence on this point but are not satisfied that the vendees have successfully established either waiver or estoppel. To deprive a person of any legal right that he possesses there must be clear and cogent evidence on the record justifying that course, and the mere oral statements of a few witnesses deposing to certain circumstances from which it may be possible to infer that the prospective pre-emptor had knowledge of the sale, would not be enough to prove that he had positively relinquished the enforcement of his right.

In the end counsel half-heartedly claimed the amount of Rs.314 which has been disallowed by the trial Judge from the cost of the improvements effected by the vendees on the land in suit. We are, however, not prepared to hold that the judgment of the trial Judge was wrong on this point.

We accordingly dismiss the appeal with costs.

The plaintiff has also submitted cross-objections but they are not pressed. We dismiss them but make no order as to costs.

P. S.

Appeal dismissed.