

APPELLATE CIVIL.*Before Addison and Din Mohammad JJ.***ZORAWAR SINGH AND OTHERS (PLAINTIFFS)**

Appellants,

*versus***JASBIR SINGH AND OTHERS (DEFENDANTS)**

Respondents.

Civil Regular First Appeal No. 256 of 1937.

Punjab Pre-emption Act (I of 1913), S. 22 (4), (5) (b) — Court whether competent to extend time once fixed by it under sub-s. (5) (b) of S. 22 — Suit for pre-emption — Court of appeal — principles governing its interference.

Held, that a Court has no power to extend time once fixed by it under sub-section (5) (b) of s. 22, Pre-emption Act.

Lala Nar Singh Dass v. Hakim Ghulam Nabi (1), and Chanda Singh v. Ismail Ji (2), distinguished.

Held further, that in a case of pre-emption if a subordinate Court exercises its legitimate powers in a legitimate manner, a Court of appeal would be loath to interfere unless very strong and cogent reasons justify its interference.

First appeal from the decree of Lala Jagan Nath, Subordinate Judge, 1st Class, Rawalpindi, dated 9th March, 1937, dismissing the plaintiff's suit.

MEHAR CHAND MAHAJAN and R. L. CHAWLA, for Appellants.

BADRI DAS, HARNAM SINGH, SHAMAIR CHAND, SAIN DAS BHAGAT and DEV RAJ SAWHNEY, for Respondents.

The Judgment of the Court was delivered by—

DIN MUHAMMAD J.—The only question involved in this appeal is whether the order of the Court below dismissing the plaintiffs appellants' suit for pre-emption for non-compliance with an order made under section 22 (5) (b) is legally maintainable.

(1) 78 P. R. 1909

(2) 75 P. R. 1913.

The facts are these. *Rai Bahadur* Buta Singh died on the 5th September, 1920. He was succeeded by his four sons, Harnam Singh, Jaidev Singh, Atma Singh and Hardial Singh. Of these, Harnam Singh died on the 28th November, 1923, leaving him surviving a son, Jasbir Singh. On the 1st June, 1929, the property belonging to Jasbir Singh and his three uncles mentioned above was placed under the superintendence of the Court of Wards. The Court of Wards by three different transactions, one of which was completed on the 18th September, 1933, and the other two on the 18th May, 1934, transferred a considerable area of land to *Sardarni* Karam Devi, widow of *Rai Bahadur* Buta Singh, for Rs.1,37,000 in all. Thereupon, the four sons of Jaidev Singh instituted a suit for pre-emption on the ground of relationship with the wards on whose behalf the Court of Wards had effected the transfers. Prior to the institution of the suit the land in question appears to have been transferred to more than 200 persons, all of whom were impleaded as defendants in the case.

Under section 22 (1) the plaintiffs were required to give security for the payment of the entire sum stated above and they produced one Ram Chand Chadha as a surety on their behalf and his security bond was accepted by the Court. On the 19th June, 1936, *Sardarni* Karam Devi, who had been impleaded as a defendant in the case, made an application under section 22 (5) (b) pointing out to the Court that the security furnished had become insufficient inasmuch as Ram Chand had gone on the verge of insolvency and praying that the plaintiffs should be called upon to furnish fresh security. It was further prayed that in view of the circumstances of the case and the "doubtful value" of the security bonds, an order should be made requiring the plaintiffs to deposit in Court a sum equal to

1938

ZORAWAR SINGH

v.

JASBIR SINGH.

1938
 ZORAWAR SINGH
 v.
 JASBIE SINGH.

one-fifth of the value of the property in suit. The plaintiffs put in their reply on the 13th July traversing the allegations made by *Sardarni Karam Devi*. They, however, expressed their willingness to furnish fresh security if so required, at the same time resisting the prayer for cash deposit. The case dragged on for some time and eventually on the 11th February, 1937, the Court made an order that fresh security should be given on the 18th February. On the 14th February, the plaintiffs made an application asking the Court to extend the period for furnishing security. This application came for hearing on the 18th February when it was resisted by *Sardarni Karam Devi* and *Sardarni Sant Kaur* who was a rival pre-emptor. The Court after hearing arguments on the question refused to extend the time prayed for and dismissed the suit for non-compliance with its order under section 22 (5) (b). Hence this appeal by the plaintiffs.

Counsel for the appellants has contended that the Court below was authorized in law to extend the time and that its decision that it was not so authorized is contrary to law. He has relied in this connection upon *Lala Nar Singh Dass v. Hakim Ghulam Nabi* (1) and *Chanda Singh v. Ismail Ji* (2), but in our view these judgments are of no use to him in this matter, inasmuch as whatever the interpretation that could be put on the old provisions of law, here the question is how to interpret the amended law which came into existence in 1913, presumably on account of the two judgments referred to above. It may be remarked that prior to the enactment of the Pre-emption Act, I of 1913, which is now in force, Act II of 1905 laid down the law relating to pre-emption in the Punjab. Under Section 19 of that Act the Court was empowered to require the

plaintiff to furnish security or to make a cash deposit within such time as was fixed by it. Subsequent to the enactment of that statute, a question arose as to whether the Court was empowered to extend the time so fixed, if the plaintiff had not been able to comply with the order of the Court within the fixed time. In *Lala Nar Singh Dass v. Hakim Ghulam Nabi* (1), a Division Bench of the Punjab Chief Court composed of Johnstone and Rattigan JJ. held that it could under certain circumstances. A similar rule was laid down in *Chanda Singh v. Ismail Ji* (2), in a suit which had obviously been instituted prior to 1913. In 1913 the law as to the making of deposits and filing of securities was amended along with the general amendment of the statute and section 22 of the Pre-emption Act then replaced section 19. In sub-section (4) of section 22, a clear authority was conferred upon the Court by the insertion of the words "or within such further time as the Court may allow." In the course of that amendment, a fresh provision of law was added in the shape of (5) (b) providing for those cases where the security furnished had become void or insufficient. In that case the words used were "within a time to be fixed by the Court" and the other words referred to above, viz., "or within such further time as the Court may allow" which had been deliberately inserted in sub-section (4) on account of the two judgments referred to above, were not repeated. The conclusion is obvious that the intention of the legislature was not to confer the power of extending time in the latter case as it was in the former and that consequently no Court can arrogate to itself the power which does not vest in it by virtue of any clear provision of law. It is a well recognized canon of interpretation that "the Legislature must be

1938

ZORAWAR SINGH
v.
JASBIR SINGH.

(1) 78 P. R. 1909.

(2) 75 P. R. 1913.

1938

ZORAWAR SINGH
v.
JASBER SINGH.

intended to mean what it has plainly expressed, and consequently there is no room for construction. It matters not in such a case what the consequences may be. Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the Legislature, it must be enforced, even though it be absurd or mischievous. The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expressions used therein rather than from any notions which may be entertained by the Court as to what is just or expedient " (Maxwell on the Interpretation of Statutes, pages 3 and 4). Had the Legislature intended to empower the Court to extend time under sub-section (5) (b) it would have conferred this power in explicit terms as it had done in sub-section (4). The omission cannot be due to inadvertance as the Legislature was alive to the importance of the question. We have no hesitation in holding, therefore, that the Court below had no power to extend the time once fixed by it under sub-section (5) (b) of section 22.

The only question that now falls for determination is whether the time fixed by the Court for filing the security was so unreasonably inadequate as to justify our interference on that ground. We have already stated above that the insufficiency of the security furnished by the plaintiffs was brought to their notice through Court as far back as June, 1936, and although the plaintiffs repudiated the allegation of insufficiency made against Ram Chand, they knew, or with little diligence could have known, full well as to what his financial position was and they had at least eight months within which to prepare themselves for the contingency that was sure to arise. They cannot, therefore, complain that they were taken by surprise

or that the Court was unduly harsh in allowing them only one week within which to furnish a fresh security. In a case of pre-emption, where artificial rights brought into existence by the Legislature are used to defeat the legal rights of persons dealing with property, no equities are involved and if a subordinate Court exercises its legitimate powers in a legitimate manner, a Court of appeal would be loath to interfere unless any strong or cogent reasons exist justifying interference and it is obvious that there are no such reasons in this case.

We accordingly maintain the order of the Court below and dismiss this appeal with costs.

A. K. C.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Blacker J.

MOHAMMAD NAWAZ AND OTHERS—Petitioners,
versus

THE CROWN—Respondent.

Criminal Revision No. 1631 of 1937.

Criminal Procedure Code (Act V of 1898), SS. 252, 256, 342 — Accused, Examination of — after further cross-examination of prosecution witnesses recalled under S. 256 — Whether mandatory provisions of S. 342 complied with — Examination of accused — Proper time.

The Magistrate examined prosecution witnesses who were duly cross-examined as they gave their evidence. The charge was then framed and on the next date of hearing a number of prosecution witnesses were recalled under section 256 of the Criminal Procedure Code and further cross-examined. He then examined the accused and after doing so recorded their defence and ultimately convicted them. It was contended that the mandatory provisions of section 342 had not

1938

ZORAWAR SINGH
v.
JASBIR SINGH.

1938

Jan. 17.