Supreme Court of India
Rikhi Ram And Anr. vs Ram Kumar And Ors. on 21 July, 1975
Equivalent citations: AIR 1975 SC 1869, (1975) 2 SCC 318, 1975 (7) UJ 546 SC
Author: N Untwalia
Bench: A Alagiriswami, N Untwalia, P Goswami
JUDGMENT N.L. Untwalia,J.

1. This appeal by special leave arises out of a suit for pre-emption filed by the appellants under Section 15 of the Punjab Pre-emption Act, 1913-hereinafter called-the pre-emption Act. The suit land is situated in the State of Haryana to which the provisions of the Act aforesaid are still applicable. The land belonged to Smt. Shanti, respondent No. 3. The appellants were the tenants of the disputed land under her. She sold the land to respondents 1 and 2 on the 21st June, 1965. The land sold measured 176 kanals 4 marlas. The plaintiffs claimed the right of pre-emption in respect of the agricultural land in suit in accordance with clause "Fourthly" of Section 15(1)(a) of the Pre-emption Act. The suit was resisted by the vendes-respondents on several grounds. It was decreed by the Trial Court on the 20th June, 1967 in respect of a portion of the land, measuring 157 kanals 2 marlas. The vendess' appeal in the First Appellate Court failed on the 20th April, 1968. They succeeded, however in the High Court of Punjab & Haryana on the basis of the decision of this Court in Bhagwan Das (dead) by Lrd. Brs, v. Chet Ram. A learned single Judge of the High Court allowed the second appeal filed by respondents 1 and 2 and dismissed the paintiffs' suit.

2. We may state a few more facts before nothing down the points urged on behalf of the appellants. In the appellants suit an order of injunction was made on 11-7-1966 restraining the defendants from dispossessing the plaintiffs from any portion of the suit land. But before the order of injunction was passed respondents 1 and 2 had filed an application before the Revenue Authorities under Section 9 of the Punjab Security of Land Tenures Act, 1953 hereinafter called the Land Tenures Act for ejectment of the appellants. An order of eviction was passed by the first authority on 225-1967; that is to say, about a month prior to the passing of the decree by the Trial Court. The appellants appeal from that order of the Assistant Collector was dismissed by the Collector on 14-9-1967. The High Court took the view that since the appellants had ceased to be the tenants of the land prior to the passing of the decree of pre-emption by the Trial Court, they were no longer qualified to get such a decree.

3. Mr. S.C. Agarwal, learned Counsel for the appellants made the following submissions:

(1) That the decision of this Court in Bhagwan Dass Case- is distinguishable or any view of the matter requires reconsideration by a larger bench.

(2) That the High Court committed errors of record and law in relying upon the order of eviction without bringing the copy of the order on record.

(3) That the order of eviction was in respect of about 3 standard acres of land only and a decrees for pre-emption in any event ought to have been made in respect of the remaining portion of the land measuring about 9 standard acres.

Section 15(1) of the Pre-emption Act says:

The right of pre-emption in respect of agricultural land and village immovable property small west

(a) where the sale is by a sole owner.... Fourthly, in the tenant who holds under tenancy of the vendor the land or property sold or a part thereof.

Under the general law of pre-emption it is firmly established that the decisive date as regards the right of preemptor to pre-empt the sale was the date of the decree. In other words the preemptor who claims the right to pre-empt the sale on the date of the sale must continue to possess that right till the date of the decree. In he loses that right if before the passing of the decree, decree for pre-emption cannot be granted even though he may have such right on the date of the suit. In several cases coming up before the Punjab & Haryana High Court a question before arose whether the rule applies to a person who claims to preampt the sale under Section 15(1)(a) Fourthly of the Pre-emption Act. In quite a large number of cases the answer given by the High Court was that it does not. While in a few, a contrary view was expressed. One of such cases from the majority line, viz. Kashmiri Lal and Ors. v. Chuhar Ram was expressly over-ruled. By this Court in Bhagwan Das's case. The facts of Bhagwan Das's case are somewhat different. Yet the ratio is aptly applicable to the facts of the instant case also. In the former case the preemptor had been evicted in pursuance of the decree of eviction prior to the institution of a suit lor pre-emption. But the decision of this Court was not given tresting this as a divisive factor. The firm rule of the general law of pre-emption was applied thus:

In the presence of the above principle which is firmly entrenched-in the law of pre-emption it us difficult to conceive that the legislature intended to depart from it in Section 15(1)(a) fourthly nor has any reason been suggested for doing so. The language employed is not very happy but the clear requirement is that the tenant must hold the land as such.

And finally it was said at page 643 :

It must be remembered that sale alone does not and cannot divest the tenant of his right to hold the land of which is in possession by virtue of his tenancy and under the vender. But if his tenancy is determined by a decree for eviction he loses his status of a tenant. He then does not satisfy the first requirement of Section 15(I) FOURTHLY that he is a tenant who holds the land. In that situation he cannot succeed in a pre-amption suit if the decree for eviction has been passed after the sale but before the institution of the suit or during its pandency and before the date of the decree. This would be so by applying the well established rule which, as stated earlier, has become a part of the law relating to preamption.

4. Mr. Agarwrl suggested a reason to depart from the general principle of the law of pre-emption in Section 15(1)(a) fourthly. Counsel submitted that under the general law of pre-emption the qualification of the pre-amptor cannot be lost at the instance of the vendes where as in the case of a tenant claiming pre-amption under Section 15(1)(a) fourthly of the Pre-emption Act the vendes can defeat the tenant's right of pre-amption by his own action. The reason suggested for making a

distinction appears to be attractive but was not forceful enough to persuade us to take the view that the decision of this Court in Bhagwan Das's case requires reconsideration. The landlord could not determine the tenancy by his unilateral section under the Land Tenures Act. An order of eviction was necessary to be obtained under Section 9. The relationship of the land-lord and the tenant ceases to exist between the parties after the passing of an order of ejectment against the tenant. Dispossession in execution of the order is not necessary for determination of the tenancy. In the instant case the appellant did not obtain an order of injunction in their application for eviction. The order of injunction was confined to a restraint on dispossession. In a given case the landlord may be prevented from obtaining an order of ejectment against the tenant so that the latter's right to pre-empt the sale made in favour of the former may not be defeated. We think two views of the law may be reasonably possible on the point at issue. It is therefore not expediant or advissable to send this case to a larger Bhagwan Das's case nor is that case distinguishable.

5. The second grievance of the appellant is to some extent justified but the submission does not stand final scrutiny. Respondents 1 and 2 had filed an application in the first appellate Court under Order 41 Rule 27 of the CPC for admitting the order of eviction dated 22-5-1967 as an additional evidence in the case. That court rejected that application, the proper course for the High Court, therefore, was to admit the order as an additional evidence if it thought it fit in law to do so. But then, the fact that there was an eviction order was not disputed before the High Court as it appears from its judgment. Of course, the High Court was not right when it said that on the date, when the land was sold a decree for ejectment against the tenant had been passed and this decree had become final in appeal. The decrees was not passed on the date of sale but surely it was passed before the decree for pre-emption was made by the first Court. In the circumstances of this case therefore we are not inclined to accept the second submission made on behalf of the appellants.

6. The third point urged on behalf of the appellants is also not fit to succeed. A copy of the order of eviction passed by the Assistant Collector was incorporated in the supplementary paper book and place before us. The order shows that eviction was allowed from the entire land. The appellants were directed to be ejected forthwith from a portion and their actual eviction from the rest of the land was deferred till the allotment of the surplus land. We are, therefore, of the view that the appellants did not continue to be tenants of any portion of the land sold to respondent 1 and 2 on the date the decree for pre-emption was passed in their favour. Hence the decree was not sustainable in respect of any portion of the land.

7. For the reasons stated above, we dismiss this appeal but without costs.