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BHOOP ALLEGED SON OF SHEO

v.

MATADIN BHARDWAJ SON OF LAKMI CHAND

DECEMBER 4, 1990

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[K. JAGANNATHA SHETTY AND A.M. AHMADI, JJ.]

Code of Civil Procedure—Section 146 and order 20 Rule 14, Order 21 Rule 16—Preemption decree—Whether could be transferred to entitled purchaser to execute the same.

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Sub-Judge, 1st Class, Mahendgarh, in a suit, granted a pre-emption decree in respect of agricultural land in favour of one Shanti Devi and against the appellant and directed Shanti Devi to deposit the sale price by November 17, 1968. The respondent Matadin obtained a Deed of Assignment in respect of the said decree and thereby acquired the rights of Shanti Devi therein. On the strength of the said Assign-

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ment deed, he put the decree to execution by getting himself substituted as a decree-holder on October 15, 1980. He claimed actual possession of the land from the appellant. The appellant contested the execution proceedings contending that the pre-emption decree was not transferable and no right passed to the respondent under the deed of assignment. It was also contended that since Shanti Devi had failed to make the

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deposit, the suit stood dismissed and Shanti Devi had no subsisting right in the decree which she could pass under the assignment deed. The Sub-Judge, 1st Class, Mahendgarh held that since the amount was not deposited on or before November 18, 1968, the suit stood dismissed and thus Shanti Devi had no interest which she could transfer. He accordingly dismissed the execution application. Respondent Mata Din, being

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aggrieved by the said order filed a revision application in the High Court. The High Court found that Shanti Devi took timely steps to deposit the sale price but due to administrative difficulties, she could deposit the amount only on November 19, 1968. The High Court therefore held that there was no delay on the part of the decree-holder to deposit the amount and hence the amount must be taken to have been

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deposited within the time allowed by the decree and so the decree-holder was competent to assign it and the assignee was entitled to execute the same. The revision application was allowed and the execution was directed to proceed. The appellant has filed this appeal against the said order after obtaining special leave and the main contention amongst others advanced on his behalf relates to the transferability of

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the decree and the maintainability of the execution proceedings.

Dismissing the appeal, this Court,

HELD: The right of pre-emption is generally conferred on a co-sharer in the property or on a person who claims some right over the property e.g., a right of way, etc., or on the ground of vicinage i.e. being an owner of the adjoining property. This right may be founded in statute or custom or personal law by which the parties are governed. The sole object of conferring this right on a co-sharer or owner of an adjacent immovable property is to exclude strangers from acquiring interest in an immovable property as a co-sharer or to keep objectionable strangers away from the neighbourhood. This right is purely personal and cannot be transferred to a third party for the obvious reason that it would defeat the very purpose of its conferment. [416G-H]

The parties in the instant case, clearly intended to transfer Shanti Devi's interest in the pre-emptional land to Matadin. This is, therefore, not a case of a transfer of a mere decree with the property remaining vested in title in the pre-emptor. [418A]

The document clearly shows that Matadin had to implead himself in place of the decree-holder as a party to the pending execution proceedings and then seek possession of the pre-emptional property. Matadin was substituted in place of the decree-holder after notice to the judgment-debtor. He was therefore, entitled to execute the decree. [418D]

Matadin was entitled in law to execute the decree transferred to him and obtain possession of the land from the judgment-debtor. [418E]

Mehr Khan v. Gulam Rasul, AIR 1922 Lahore 300; *Negeshwar v. Taluk Singh*, AIR 1930 Oudh 195; *Wajid Ali v. Salian*, [1909] ILR 31 All 623; *Zila Singh v. Hazari*, [1979] 3 SCR 222; *Chandrup Singh v. Data Ram*, AIR 1983 P & H 1; *Sarju Prasad v. Jamna Prasad*, (unreported) S.A. from order No. 45 of 1983 decided on November 21, 1983 and *Jugal Kishore Saraj v. Raw Cotton Co. Ltd.*, [1955] SCR 1369, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1172 of 1986.

From the Judgment and Order dated 22.11.1985 of the Punjab & Haryana High Court in Civil Revision No. 1217 of 1983.

Dr. Shankar Ghosh, (NP), Ms. S. Janani, Ms. Meenakshi, and

A Mrs. Urmila Kapoor (NP) for the appellant.

Harbans Lal, B. Goel (NP), Ashok K. Mahajan and Prashant Bhushan for the respondent.

The Judgment of the Court was delivered by

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AHMADI, J. In suit No. 108 of 1967 the learned Sub-Judge, Ist Class, Mahendergarh, granted a pre-emption decree in respect of a parcel of agricultural land in favour of one Shanti Devi and against the appellant herein. Under the decree she was required to deposit four-fifth of the sale price by November 18, 1968. The respondent Matadin claimed that he had acquired the rights of Shanti Devi in the decree under a deed of assignment dated October 13, 1980. On the strength of the said assignment deed he put the decree to execution by getting himself substituted as decree-holder on October 15, 1980. He claimed actual possession of the land from the appellant. The appellant contested the execution proceedings on the ground that a pre-emption decree was not transferable and hence no right passed to the respondent under the deed of assignment. It was further contended that under the decree Shanti Devi was required to deposit four-fifth of the consideration money by November 18, 1968 and since she had failed to make the deposit, the suit stood dismissed and Shanti Devi had no subsisting right in the decree which she could pass under the deed of assignment. On the pleadings the executing court framed two issues, the first bearing on the legality of the assignment and the second on the consequence of non-deposit of the amount in Court. The learned Subordinate Judge, First Class, Mahendragarh held that since the amount was not deposited on or before November 18, 1968, the suit stood automatically dismissed and, therefore, Shanti Devi had no interest which she could transfer under the impugned deed of assignment. Consequently he dismissed the execution application by his order dated January 18, 1983.

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Feeling aggrieved by the said order the present respondent filed a Revision Application No. 1217 of 1983 in the High Court of Punjab & Haryana. The learned Single Judge who heard the revision application recorded a finding that the decree-holder had taken timely steps to deposit the amount before November 18, 1968. He noticed that the Presiding Officer, i.e., the Subordinate Judge, First Class, Mahendragarh had relinquished charge on transfer on October 30, 1968 and since no one had taken charge in his place she had preferred an application on November 13, 1968 accompanied by a Treasury Challan for

depositing the amount but her application was not entertained. Thereupon she placed the said application before the Senior Subordinate Judge, Narnaul, on November 16, 1968, but unfortunately the same was rejected for want of jurisdiction. The decree-holder then moved the learned District Judge, Gurgaon, on November 18, 1968. The learned District Judge passed an order authorising the Senior Subordinate Judge, Mahendragarh, to accept the amount. Accordingly the amount was deposited on November 19, 1968. The learned Single Judge in the High Court rightly held that a party cannot be made to suffer for no fault of her own. He, therefore, held that there was no delay on the part of the decree-holder to deposit the amount and hence the amount must be taken to have been deposited within the time allowed by the decree and so the decree-holder was competent to assign it and the assignee was entitled to execute the same. He, therefore, allowed the revision application and directed the execution to proceed. It is against the said order that the present appeal by special leave is filed.

The High Court, however, did not address itself to the crucial question regarding the transferability of the decree. In the objections filed to the execution proceedings the Judgment-debtor had raised the contention that the execution proceedings were not maintainable as the decree-holder was not competent to transfer the decree. Dr. Ghose, counsel for the appellant, contended that since a pre-emption decree confers a personal right only, the decree-holder has no right to transfer her interest under the decree before it is effectuated by obtaining possession. In other words according to Dr. Ghose a pre-emptor cannot transfer her right of pre-emption before the decree is effectuated and in any case an assignee of a pre-emption decree cannot put the decree to execution and seek possession thereunder. This right, contends Dr. Ghose, is reserved to the pre-emptor although she may convey the property after the decree is effectuated.

In *Ram Sahai v. Gaya*, [1884] ILR 7 Allahabad 107, the respondents who had obtained a decree for pre-emption of June 30, 1883, executed a sale deed on November 29, 1883 conveying the property to one Ambika Prasad. On that very day the respondents themselves put the decree to execution after disclosing the sale to Ambika Prasad, and prayed that the latter be permitted to deposit the purchase money. The respondents prayed that they may be put in possession to enable them to make over the property to Ambika Prasad. The Executing Court acceded to both the prayers. On appeal, the Judgment-debtor contended that the execution of the sale deed before obtaining actual

- A possession invalidated the right of the respondents rendering the decree incapable of enforcement. The Judgment-debtor placed reliance on the case of *Rajjo v. Lalman*, ILR 5 Allahabad 180 wherein it was laid down that when a pre-emptor, anticipating success, transfers the property claimed in pre-emption which is not consistent with the object of the pre-emption suit, such transfer operates as forfeiture
- B of the pre-emptive right, and consequently the suit must fail. This case was distinguished on the ground that the transfer was anticipatory i.e., effected even before the decree was passed and therefore, the pre-emptor had infringed his right of pre-emption in respect of the property. In that case Mahmood, J. pointed out that what was transferred under the sale deed was the property and not the decree, subject of course to the payment of the purchase money within the time stipulated under the decree. It was further pointed out that the decree holder was entitled to execute the decree and the Executing Court could not go behind it to annul it. If, however, Ambika Prasad were to seek possession under the decree, "we should have disallowed his application for execution" said the learned Judge. The learned Judge
- C then proceeded to state the law at page 111 in the following words:
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- E "The sole object of the right of pre-emption is the exclusion of such strangers as are objectionable to the pre-emptive co-sharers of the vendor. And if a decree for pre-emption were capable of transfer, so as to enable the transferee to obtain possession of the pre-emptional property in execution of that decree, it is clear that the object of the right of pre-emption would be defeated, for the transferee of the decree may be as much a stranger as the vendee against whom the decree was obtained, or that the latter may be a pre-emptor of a lower grade than the pre-emptor who originally obtained the decree."
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- G "A decree once passed cannot, as we have already said, be questioned by any of the parties thereto when the decree is being executed, and if a decree for pre-emption could be validly transferred, the effect would be to place the transferee in possession without the trial of the question whether such transferee had the pre-emptive right in preference to the vendee against whom the decree was obtained."

- H On this line of reasoning, the learned Judge distinguished *Rajjo's* case and held that since what was transferred was property and not the

decree and since possession was sought by the decree-holder and not the vendee, the execution proceedings were competent. This view was accepted as laying down the correct law in *Mehr Khan v. Gulam Rasul*, AIR 1922 Lahore 300 and *Nageshwar v. Taluk Singh*, AIR 1930 Oudh 195.

This Court in *Hazari v. Neki*, [1968] 2 SCR 833 was required to consider if the legal representative of the original plaintiff who had initiated the proceedings for enforcing his right of pre-emption could be brought on record. The submission was that since the right of pre-emption was a personal right it could not be transferred, whether voluntarily or involuntarily, and the proceedings must come to an end on the death of the pre-emptor. Dealing with this submission, in the context of Order 22 Rules 1 and 10 of the Code of Civil Procedure, this Court approved the view taken by the Full Bench of the Allahabad High Court in *Wajid Ali v. Salian*, [1909] ILR 31 Allahabad 623 wherein it was held that where a right of pre-emption exists by custom as recorded in the village *Wajib-ul-arz*, the right have once accrued did not lapse on the death of the pre-emptor but devolved on the heirs of the deceased. In a subsequent round of litigation between the same parties reported in *Zila Singh v. Hazari*, [1979] 3 SCR 222 this Court while reversing the majority view in *Hazari v. Zila Singh*, AIR 1970 P & H 215 further clarified that the distinction between a voluntary inter vivos transfer and an involuntary transfer such as by way of inheritance is immaterial where the Court is concerned with a statutory right which had fructified into a decree before the death of the pre-emptor pending the second appeal. The Full Bench of the Punjab & Haryana High Court has in the subsequent case of *Chandrup Singh v. Data Ram*, AIR 1983 P & H 1 further clarified this position in paragraph 18 of the Judgment. It is, therefore, clear that where a transfer takes place after the right of pre-emption has ripened into a decree, the legal representative of the deceased pre-emptor is entitled to be brought on record.

We may clarify that we are dealing with a statutory right of pre-emption and not one under the Mohamaddan Law. The right of pre-emption was exercised by Shanti Devi in respect of a parcel of agricultural land. The pre-emption decree was passed by the trial court on October 14, 1968 whereunder Shanti Devi was required to deposit four-fifth of the sale price by November 18, 1968. The respondent Matadin obtained a Deed of Assignment in respect of the said decree for Rs. 10,000. A copy of this document is produced on record. After narrating the fact of Shanti Devi having secured a pre-emption decree

A and taking note of her obligation to deposit four-fifth of the sale price on or before November 18, 1968, the document recites as under:

B “Therefore, I give it in writing today transferring the decree through assignment in favour of the aforesaid Shri Matadin Bhardwaj in lieu of Rs.10,000 received in advance already while agreement to transfer decree of possession of agricultural land through assignment was executed, while I am in sound sense and mind, seeing it a profitable bargain, because this decree was attained by executant on the basis of right of pre-emption against the aforesaid Bhup in him of Rs.5,000 that the executant decree holder or basis of executant decree holder do not (now) have, nor they will have concern of any kind with the aforesaid decree or its subject matter i.e. agricultural land or with its possession”

D It is further stated that Matadin will be entitled to possession of the land from the Judgment-debtor by proceeding with the execution after having his name substituted in her place. It is crystal clear from the recitals in the document that Shanti Devi had assigned her right to seek possession and the vendee was informed of the pendency of the execution proceedings. Dr. Ghose contends that under the document as it stands she had not sold the land to Matadin but had merely assigned the decree to him with a right to secure possession of the agricultural land from the Judgment-debtor. Relying on the unreported decision of the Allahabad High Court in *Sarju Prasad v. Jamna Prasad*, S.A. from Order No. 45 of 1883 decided on November 12, 1883 he stressed that pre-emption decree being purely personal it could not be transferred so as to entitle the vendee to execute the same. The question then is whether Matadin can maintain the said proceedings and obtain possession of the land in question?

G It is common knowledge that the right of pre-emption is generally conferred on a co-sharer in the property or on a person who claims some right over the property e.g., a right of way, etc., or on the ground of vicinage i.e. being an owner of the adjoining property. This right may be founded in statute or custom or personal law by which the parties are governed. The sole object of conferring this right on a co-sharer or owner of an adjacent immovable property is to exclude strangers from acquiring interest in an immovable property as a co-sharer or to keep objectionable strangers away from the neighbourhood. This right is purely personal and cannot be transferred to a third party for the obvious reason that it would defeat the very purpose of its

conferment. That is why the Allahabad High Court in *Sarju Prasad* (supra) held that a decree for pre-emption being purely personal in character could not be transferred so as to entitle the purchaser to execute the same. Dr. Ghose, therefore, submitted that Matadin was not entitled to put the decree to execution and obtain possession of the pre-emptional property from the appellant. This submission, in our view, overlooks the scheme of Section 146, Order 20 rule 14 and order 21 rule 16 of the Code of Civil Procedure.

Section 146, which was introduced for the first time in the 1908 Code, lays down that where any proceeding is taken or application is made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him, unless otherwise provided by the Code or any other extant law. Then comes Order 20 rule 14 which specifically deals with pre-emption decrees. It provides that where the Court decrees a claim to pre-emption in respect of a particular sale of property, the Court shall specify a day on or before which the purchase money shall be paid (if not paid earlier) and direct that on payment into Court of such purchase money on or before the specified day, the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment. The words "whose title thereto shall be deemed to have accrued from the date of payment" make it clear that immediately on payment of the purchase money on or before the specified date, the title to the property would vest in the pre-emptor without any further documentation. There can, therefore, be no doubt that as soon as Shanti Devi deposited the purchase money i.e., the balance four-fifth amount in Court on November 19, 1968, the title to the pre-emptional land accrued to her by the fiction of law and she became the owner of the said land and the Judgment-debtor was under an obligation to deliver possession thereof to her by the thrust of the words "the defendant shall deliver possession of the property to the plaintiff" in clause (b) of sub-rule (1) of rule 14 of Order 20 CPC. When Shanti Devi executed the document, described as a deed of assignment, she clearly transferred her interest in the said pre-emptional land to Matadin. This is clear from the language of the document wherein after the extracted portion it is recited: "Matadin Bhardwaj will have the capacity of decree-holder-assignee the same rights which have accrued to the executant-decree-holder". These words leave no doubt that the parties to the document were aware that certain rights in the property have accrued to Shanti Devi and she was transferring those rights to Matadin. In our view, therefore, apart from the nomenclature of the document, the

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A parties clearly intended to transfer Shanti Devi's interest in the pre-emptional land to Matadin. This is, therefore, not a case of a transfer of a mere decree with the property remaining vested in title in the pre-emptor. The case stands squarely covered by the dictum of Mahmood, J. in *Ram Sahai's* case (supra).

B Order 21 rule 16 next provides that where a decree or the interest of a decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it, and the decree may be executed as if the application were made by the decree-holder. The newly added Explanation to the said rule makes it clear that the rule shall not affect the provisions in Section 146 of the Code nor shall it affect a transferee of rights in property, which is the subject matter of the suit, from applying for execution of the decree without there being a separate assignment of the decree. In the present case the document clearly shows that Matadin had to implead himself in place of the decree-holder as a party to the pending execution proceedings and then seek possession of the pre-emptional property. Matadin was substituted in place of the decree-holder after notice to the Judgment-debtor. He was, therefore, entitled to execute the decree.

E On a conjoint reading of the aforesaid provisions of the Code, it seems clear to us that Madadin was entitled in law to execute the decree transferred to him and obtain possession of the land from the Judgment-debtor. In *Jugal Kishore Sarai v. Ram Cotton Co. Ltd.*, [1955] SCR 1369 (AIR 1955 SC 376) this Court held that a person who claims benefit under a decree by reason of its transfer can apply under Section 146 and failing that under Order 21 Rule 16 CPC. In *Zila Singh*, (supra) this Court while disagreeing with the majority view of Punjab & Haryana High Court in *Hazari's* case (supra) held that a transferee of the pre-emptor's right in the land which has vested in him by virtue of Order 20 rule 14 on compliance of the requirement of payment of the purchase money by the specified date, can maintain an application for execution under Section 146, or Order 21 rule 16, CPC. In other words it was said that if the transferee of the decree cannot avail of the latter provision he can certainly resort to the former.

G For the reasons set out above we see no merit in this appeal and dismiss the same with costs.