
(1971) 05 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 80 of 1969

Ganga Singh Wasawa Singh

APPELLANT

Vs

Narinjan Singh Ganga Singh

RESPONDENT

Date of Decision : 19-05-1971

Acts Referred:

Citation : AIR 1972 P&H 24

Hon'ble Judges : Gopal Singh, J;D.K. Mahajan, J

Bench : Division Bench

Judgement

1. This order will dispose of Letters Patent Appeals Nos. 80 and 81 of 1969. Both these appeals are under clause 10 of the Letters Patent and are directed against the decision of the learned Single Judge of this Court. In both these appeals, a common question of law arises. The question of law is whether a pre-emptor can sue for pre-emption of part of the property on payment of the entire sale consideration. The lower appellate Court as well as the learned Single Judge have taken the view that such a suit would be barred as a pre-emptor cannot sue for partial pre-emption--the rule being that in pre-emption there is substitution of the pre-emptor for the vendee and there is no retransfer of the property. The matter is not res integra. It is concluded by the Full Bench decision of the Lahore High Court in Ghulam Qadir v. Ditta AIR 1945 Lah 184 and a Division Bench decision of that Court in Tirath Ram v. Dina Nath deceased, through his representatives ILR (1933) Lah 810 : AIR 1933 Lah 774. Mr. Sarin, however, drew our attention to cases decided by Oudh High Court, the latest being Paltan Singh v. Prag Narain AIR 1945 Oudh 167 wherein it has been held that there is nothing wrong in a pre-emptor suing for pre-emption of a part of the property on payment of entire sale consideration. With utmost respect to the learned Judges who decided these cases, we are of the view that they do not lay down the correct rule of law. In the first place, it has not been brought to our notice what is the law of pre-emption prevailing in Oudh. In the second place, so far as the pre-emption law in the Punjab is concerned, one rule is firmly settled that the right of pre-emption is a right of substitution. In other words, the name of the

vendee is rubbed from the sale deed and that of the pre-emptor is introduced therein. There is another way of looking at the matter. Supposing, the vendee purchases property for a particular purpose and by permitting partial pre-emption on payment of the whole consideration he is left with part of the property which does not serve his purpose, he is unnecessarily bound down to that part of the property and it would be no argument to say that there is no loss to the vendee. From the various considerations which have to be taken notice of while dealing with a claim of pre-emption and, as already stated, the right of pre-emption being a right of substitution, the very basis of that right is destroyed by permitting a decree for partial pre-emption though on payment of the entire sale consideration. The view we have taken is amply supported by authorities. For the reasons recorded above, these appeals fail and are dismissed. As there is no representation for the respondent, there will be no order as to costs.

2. Appeals dismissed.