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SUNDER SINGH AND ORS.

v.

NARAIN SINGH AND ORS.

March 11, 1966

B [P. B. GAJENDRAGADKAR, C. J., K. N. WANCHOO, M. HIDAYATULLAH, J. C. SHAH AND S. M. SIKRI, JJ.]

*Patiala and East Punjab States Union Holdings (Consolidation and Prevention of Fragmentation) Act 5 of 2007 BK, ss. 24 and 25—Land sought to be pre-empted exchanged for other land in consolidation proceedings—pre-emptor's right to follow the land to which his right attaches.*

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The appellants purchased certain lands in the State of Punjab and the respondents filed a suit claiming a right of pre-emption thereon. Under a scheme of consolidation, however, the appellants had before the filing of the suit, been allotted some other lands in lieu of the lands purchased by them, and they contended that the right of pre-emption claimed by the respondents did not extend to these lands. The trial court and the High Court decreed the respondents' suit holding on the basis of s. 24 of the Patiala and East Punjab States Union Holdings (Consolidation and Prevention of Fragmentation) Act 5 of 2007 BK that it was open to pre-emptor to follow the land which had been given to the vendees in consolidation proceedings in lieu of the land which was the subject matter of the sale-deed. The appellants came to this Court by special leave.

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HELD : Section 24 when it says that the landowner or the tenant at will shall have the same right in the land allotted to him as he had in his original holding or tenancy clearly preserves the obligation that may be on the land in the nature of a disability. The consequence therefore is that the ordinary law of pre-emption under which the pre-emptor has the right to follow the land which is the subject-matter of the sale-deed becomes expanded and the land allotted to the landlord and tenant at will in lieu of the land which may have been subject to pre-emption also becomes subject to pre-emption in the same way as the original holding or the tenancy. This inference is not negatived by the special provisions of s. 25 in respect of leases and mortgages or other encumbrances. [866 G; 867 D-E]

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*Shri Audh Behari Singh v. Gajadhar Jaipuria*, [1955] 1 S.C.R. 70. *Bishan Singh v. Khazan Singh*, [1959] S.C.R. 878 relied on.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 822 of 1963

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Appeal by special leave from the judgment and decree dated April, 7, 1961 of the Punjab High Court in Regular First Appeal No. 32 of 1957.

*Bishan Narain and B. P. Maheshwari*, for the appellants Nos. 1-3 and 5-10.

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*M. V. Goswami*, for appellant No. 4.

*Bhawani Lal, E. C. Agarwala, Ganpat Rai and P. C. Agarwala*, for respondent Nos. 1(i)-1(vi).

The Judgment of the Court was delivered by

**Wanchoo, J.**— This is an appeal by special leave from the decree of the Punjab High Court in a suit brought by the plaintiffs-respondents for pre-emption. The appellants are vendees to the sale which was pre-empted. The facts found by the courts below are these. The property in suit consisted of agricultural land as well as some *baras* in village Jalalpur. Punnu Singh and Mansha Singh who were also parties to the suit as defendants sold the property in suit on January 15, 1955 to the appellants. Thereafter consolidation proceedings took place in this village and came to an end before the present suit was filed on January 14, 1956. Of the vendees, six had no share in the village from before while four already had some share in the village. As a result of the consolidation proceedings, six of the vendees who had no share in the village from before were allotted other land in place of the land which they had purchased under the sale-deed. The other four vendees who had some share in the village from before were allotted land in two blocks in lieu of the land they had in the village from before as well as the land which they had purchased by the sale deed in question. The plaintiffs-respondents instituted the suit on the basis of their being collaterals and co-sharers and wanted that they should be given out of the land allotted to the vendees in consolidation proceedings such land as they would be entitled to after pre-emption of the sale in question.

The suit was resisted by the appellants on a number of grounds. The main ground of defence with which we are concerned in the present appeal was whether the suit was maintainable with respect to the land which had been obtained by the vendees during consolidation proceedings in lieu of the land which was the subject matter of the sale deed. The trial court held in favour of the plaintiffs-respondents and granted a decree for pre-emption. On appeal to the High Court by the vendees, the High Court held on the basis of s. 24 of the Patiala and East Punjab States Union Holdings (Consolidation and Prevention of Fragmentation) Act, No. 5 of 2007 Bk. (hereinafter referred to as the Act), that it was open to the pre-emptor to follow the land which had been given to the vendees in consolidation proceedings in lieu of the land which was the subject matter of the sale deed. Further in the High Court another point was raised on behalf of four of the appellants who had land from before in the village and it was urged that in their case it was not possible to distinguish which land had been allotted to them in place of the land sold and therefore no pre-emption decree should be granted. This argument was also rejected by the High Court, and the appeal was dismissed. The High Court having refused the certificate, the appellants applied and obtained special leave from this Court; and that is how the matter has come before us.

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A The main question that has been argued before us is that the suit is not maintainable as it is not open to the pre-emptor to follow the land which might have been obtained by the vendees in lieu of the land actually sold to them. The answer to this question depends upon the interpretation of s. 24 of the Act in the background of the law of pre-emption. In *Shri Audh Behari Singh v. Gajadhar Jaipuria*,<sup>(1)</sup> this Court held that—

B “The correct legal position seems to be that the law of pre-emption imposes a limitation or disability upon the ownership of a property to the “extent that it restricts the owner’s unfettered right of sale and compels him to sell the property to his co-sharer or neighbour as the case may be  
 C . . . . . The crux of the whole thing is that the benefit as well as the burden of the right of pre-emption run with the land and can be enforced by or against the owner of the land for the time being although the right of the pre-emptor does not amount to an interest in the land itself. . . . . The right of pre-emption is an incident of property and attaches to the land itself. . . . .”

D This Court had occasion to consider the matter again in *Bishan Singh v. Khazan Singh*<sup>(2)</sup> and pointed out that the right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to be sold, this being the primary or inherent right, and that the pre-emptor has a secondary right or a remedial right to follow the thing sold. Reliance is placed on behalf of the appellants on  
 E this later decision and it is stressed that the pre-emptor’s remedial right is merely to follow the thing sold, namely, the very property which is the subject-matter of the sale-deed under pre-emption.

F The later decision on which reliance is placed does not in any manner affect the earlier decision where it was held that the right of pre-emption is an incident of property and attaches to the land. It is true, as held in the later decision, that ordinarily the right of the pre-emptor is to follow the property which is the subject-matter of the sale deed. The question which, however arises in the present case is whether s.24 of the Act makes any difference to this ordinary position of the law of pre-emption. That section reads as follows:—

G “A land-owner or a tenant at will shall have the same right in the land allotted to him in pursuance of the scheme of consolidation as he had in his original holding or tenancy as the case may be.”

H Clearly the effect of this provision is to give to the land-owner or a tenant at will the same right in the land which he acquires under the scheme of consolidation in lieu of that land which he had before the consolidation proceedings. He cannot get more

(1) [1955] 1 S.C.R. 70.

(2) [1959] S.C.R. 878.

rights than he had before nor can he get any less rights. It is urged that that section only preserves the rights and has nothing to do with obligations to which the land may be subject. We are of opinion that this is not so. When the section lays down that the land-owner or a tenant at will shall have the same right in the land allotted to him in pursuance of the scheme of consolidation as he had in his original holding or tenancy, it clearly implies that obligations would also remain the same. If that were not so and if his obligations were to disappear he would acquire more right in the land allotted to him than he had in the original holding or tenancy. For example, if the land-owner had only a life interest in the original holding he would get the same life interest in the land allotted to him and could not claim to be absolute owner of the land allotted in consolidation proceedings. Thus the obligation which attached to his ownership of his original holding (namely, that it was subject to all the disabilities of a limited owner) would also apply to the land allotted to him in consolidation proceedings. Therefore when s. 24 speaks of the landowner or the tenant at will having the same right in the land allotted as he had in the original holding or tenancy, it brings in all the rights and obligations which were attached to his ownership or tenancy of the land originally held.

It is in this background that the nature of the right of pre-emption as held in *Audh Behari Singh's case* (1) assumes importance. In that case it was held that the law of pre-emption imposes a limitation or disability upon the ownership of a property and that the benefit as well as the burden of the right of pre-emption run with the land. Therefore if the original holding of the landowner was subject to the disability of pre-emption the land allotted in lieu thereof will be equally subject to the same disability. This will however always be subject to the law of pre-emption itself, and to the well-settled principle of pre-emption, namely, that the pre-emptor must have a right of pre-emption at the date of the sale, at the date of the suit and finally at the date of the decree. Section 24 when it says that the landowner or the tenant at will shall have the same right in the land allotted to him as he had in his original holding or tenancy, clearly preserves the obligation that may be on the land in the nature of a disability. The consequence therefore is that the ordinary law of pre-emption under which the pre-emptor has the right to follow the land which is the subject-matter of the sale deed becomes expanded and the land allotted to the land-owner or tenant at will in lieu of the land which may have been subject to pre-emption also becomes subject to pre-emption in the same way as the original holding or tenancy. So it follows that if the land allotted in lieu of the original holding or tenancy is pre-emptible under the law of pre-emption and the right of pre-emption still exists on the three dates to which we have

(1) [1955] 1 S.C.R. 70.

A already referred, the pre-emptor would by virtue of s.24 be able to enforce his rights against land which may have been allotted to the vendee in lieu of the land which was actually the subject-matter of sale. We are therefore of the opinion that the construction of s. 24 by the High Court is correct and the plaintiffs-respondents have a right by virtue of s. 24 of the Act to pre-empt the land which was allotted to the appellants in lieu of the land which was the subject-matter of the sale-deed.

It is however urged that s. 25 of the Act specifically provides for rights with respect to a lease, mortgage or other encumbrance to attach to the land allotted in place of the original holdings, and that shows that no other rights were intended to survive. We are of opinion that there is no force in this argument. It was necessary to enact s. 25 when dealing with leases, mortgages and encumbrances for without such a specific provision, a lease, mortgage or encumbrance which was on one piece of land could not in law attach to another piece of land. This however is very different from an incident of ownership of land e.g. liability to pre-emption which attaches to the land itself and continues to attach to the land allotted in lieu of the original holding or tenancy by s. 24. The special provisions therefore in s. 25 do not negative the inference that obligations which attach to the right of ownership of the original holding or tenancy would continue to attach to the land allotted in lieu thereof in consolidation proceedings.

This brings us to the subsidiary contention which was raised in the High Court, namely, that four of the vendees were allotted land in lieu both of what they owned from before and what they got under the sale deed in question. The High Court has held and we think rightly-that there should be no difficulty in finding out how much of the land allotted pertains to the land which was the subject-matter of the sale-deed. Land is always valued for purposes of allotment during consolidation proceedings and it would not therefore be difficult to find out how much land was allotted to these four vendees in place of the land which they got by the sale deed.

Lastly it is urged that the form of the decree is incorrect. This submission is made on the basis of the following sentences in the judgment of the trial court:

G "It does not mean that the land is not distinguishable. It can be considered during execution at the time of delivering the possession of the land."

We have not permitted learned counsel to raise this point for the first time before us, as it was not raised in the High Court. We therefore reject this contention.

H The appeal fails and is hereby dismissed. Costs as per order dated 8-9-65.

*Appeal dismissed.*