



plaintiffs inherited his estate and came in cultivating possession over the suit property as tenants. The plaintiffs claimed that sale deed has been executed by the owners in favour of defendants No.1 to 3 without there being any prior notice to the plaintiffs as required under Section 19 of the Punjab Pre-emption Act, 1913. Thus, they are entitled to pre-empt the sale deed.

4. Suit was contested by defendants No.1 to 3 by filing joint written statement. They denied that there was 'landlord-tenant relationship' between plaintiff and defendants No.4 to 6. Execution of Will dated 15.7.1999 by Jaswant Singh, was also denied. Defendants No.1 to 3 claimed to have purchased land by way of registered sale deed for a valuable consideration.

5. Defendants No.4 to 6, the owners of the suit property, also denied relationship of landlord-tenant with Jaswant Singh grandfather of the plaintiffs. They denied tenancy in possession of Jaswant Singh over the suit property.

6. On the basis of the pleadings of the parties, Court of the First Instance framed the following issues :

- “1. Whether the plaintiffs are in continuous possession of the suit property being tenant and have superior right of pre-emption on the grounds mentioned in Para No.5 of the plaint? OPP
2. Whether the sale deed dated 05.06.2003 is liable to be set aside? OPP
3. If issue No.1 and 2 are proved, whether the plaintiffs are entitled for decree of possession by way of pre-emption



over suit property and permanent injunction on the grounds mentioned in the plaint? OPP

4. Whether the suit is not maintainable? OPD
5. Whether the plaintiffs have no cause of action and locus standi to file of the plaintiff suit? OPD
6. Whether the suit of the plaintiff is not proper for the purpose of court fees and jurisdiction? OPD
7. Whether defendant No.1 to 3 are owners in possession and the plaintiffs never in possession of the suit property under defendants No.4 to 6? OPD
8. Relief.”

7. Court of the First Instance answered issue No.1 in favour of the plaintiffs, holding that they are in continuous possession of the suit property being tenants and have superior right to pre-empt the sale deed.

8. Issue No.2 also was answered in favour of the plaintiffs. The Court of the First Instance thus decreed the suit granting decree of pre-emption in favour of the plaintiffs *qua* the suit land.

9. In appeal preferred by defendants No.1 to 3, Lower Appellate Court though maintained the finding on Issue No.1 in favour of the plaintiffs, however, reversed the findings recorded by the Trial Court on Issues No.2 to 4 and dismissed the suit being bad for partial pre-emption.

10. Counsel for the appellants has assailed the findings recorded by the Lower Appellate Court. It has been contended that the findings recorded by the Lower Appellate Court to the effect that the suit has been filed *qua* part of land measuring 4 Bigha 19 Biswas and not *qua* the entire land, is contrary to the mandate of law. The plaintiffs are tenants in possession to



the extent of 4 Bigha 19 Biswas and not entire land. Thus, the Lower Appellate Court ought not have dismissed the suit filed by the plaintiffs. Reliance is being placed upon ratio of law laid down in the case of **Ajaib Singh vs. Pritam Singh, 1998(1) RCR (Civil) 738, Smt. Maya Devi and others vs. Rattan Singh and another, 2010(3) RCR(Civil) 140, Damodar and others vs. Hari Singh and others, 1970 PLR 371, Lala Lajpat Rai University of Veterinary and Animal Sciences, Hisar vs. Umesh Yadav and others, 2015(4) PLR 837, Partap Singh and another vs. Kalu Ram, 1969 CurLJ 829, Moti Ram vs. Bakhwant Singh, 1968 AIR (Punjab) 141, Moti Lal and another vs. Kartar Singh and others, 1930 AIR (Lah) 515 and Mool Chand and another vs. Mani Ram, 1983 RLR 356.**

11. Per contra, counsel for respondents No.1 to 3/defendants has argued that even if it is assumed that the plaintiffs were entitled to maintain the suit for pre-emption *qua* part of the land and that their grandfather Jaswant Singh, was *gair marusi* tenant on the suit property, the plaintiffs have no right to file the present suit for pre-emption. It has been contended that the tenancy rights though inheritable, cannot be willed away. Thus, even if grandfather of the plaintiffs, i.e. Jaswant Singh, is assumed to be tenant on the suit property, it is his son Sita Ram, who could have filed the suit for pre-emption. During the lifetime of Sita Ram, the plaintiffs have no right to file the present suit claiming tenancy rights on the basis of Will. Reference is being made to testimony of PW3 Prithvi Singh (plaintiff No.2). He admitted that his father Sita Ram is alive and has not joined them in



filing suit for pre-emption. It has been further contended that the Will relied upon by the plaintiffs, has been discarded by both the Courts below as original Will was never produced. No attesting witness was examined to prove the same. Reliance is being placed upon law laid down in the case of **Chuhar Singh vs. Jagat Singh, 1986 PLJ 373** and **Karam Chand vs. Kewal Krishan and others, 1985 PLJ 581**.

12. Mr. Gupta is not in position to dispute the fact that Sita Ram as per statement of PW3, is alive and has not filed the suit to pre-empt the sale deed.

13. The issue:

‘as to whether the tenancy rights which are inheritable in terms of the provisions contained under the Punjab Tenancy Act, 1887, can be bequeathed by way of Will?’ came up for consideration before this Court in **RSA No.1401 of 2024** titled as **‘Griphan Masih vs. Pal Masih and others’**, decided on 11.12.2024. This Court observed as under :

“4 The precise issue came before this Court in ***Karam Chand and another Vs. Kewal Krishan and others, 1983 RRR 17*** referring to Section 59 of the 1887 Act wherein this Court observed as under :-

“5. What to talk of tenancy-at-will, even the inheritance of occupancy rights is governed by Section 59 of the Punjab Tenancy Act. There is no warrant for the proposition that the tenancy rights can be willed away by the tenant. It was held in Sawan Singh's case (supra) while dealing with the Punjab Tenancy Act that there is no power in the occupancy tenant to dispose of the occupancy tenancy by a Will taking



effect after his death. The matter was also considered by this Court in Mahan Singh and another v. Haryana State and others, 1978 PLR 553, while interpreting Section 10-A of Punjab Security of Land Tenures Act. It was observed therein :-

"That the short question to be considered is whether the petitioners are entitled to the benefit of the provisions of Section 10-A(b) of the Act or not. The said benefit can only be made available if the land is acquired by the State Government under any law for the time being in force or by any heir by inheritance. Disposition of property by Will in no sense can be termed as inheritance. Thus Mahan Singh and Pritpal Singh who became owners of the property in view of the Will made by Smt. Parbati cannot be termed as heirs by inheritance."

6. *Thus viewed from any angle, Section 8 squarely provides that the continuity of the tenancy shall not remain intact after the death of the tenant when the tenant leaves no male lineal descendant or mother or widow."*

5 Section 4 (5) of the 1887 Act defines 'Tenant' as under :-

"(5) "tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that other person; but it does not include—

(a) an inferior landowner, or

(b) a mortgagee of the rights of a landowner, or

(c) a person to whom a holding has been transferred, or an estate or holding has been let in farm, under the Punjab Land-revenue Act, 1887, for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear; or



(d) a person who takes from the Government a lease of unoccupied land for the purpose of subletting it.”

6 Section 4 (7) of the 1887 Act provides that the tenant shall include the predecessors and successors-in-interest of tenant. Thus the tenancy under the Act is inheritable but is not bequeathable. The objective behind prohibition of tenancy being bequeathable was elaborately explained by Supreme Court in ***Vasant Pratap Pandit Vs. Dr. Anant Trimbak Sabnis, 1994(1) RCR (Rent) 747 (SC)*** observing as under :-

“15. From a plain reading of Section 5(11)(c)(i) it is obvious that the legislative prescription is first to give protection to members of the family of the tenant residing with him at the time of his death. The basis for such prescription seems to be that when a tenant is in occupation of premises the tenancy is taken by him not only for his own benefit but also for the benefit of the members of the family residing with him. Therefore, when the tenant dies, protection should be extended to the members of the family who were participants in the benefit of the tenancy and for whose needs as well the tenancy was originally taken by the tenant. It is for this avowed object, the legislature has, irrespective of the fact whether such members are 'heirs' in the strict sense of the term or not, given them the first priority to be treated as tenants. It is only when such members of the family are not there, the 'heirs' will be entitled to be treated as tenants as decided, in default of agreement, by the court. In other words, all the heirs are liable to be excluded if any other member of the family was staying with the tenant at the time of his death. When Section 15, which prohibits sub-letting, assignment or transfer, is read in juxtaposition with Section 5(11)(c)(i) it is patently clear that the legislature intends that in case no member of the family as referred to in the first part of the clause is there the 'heir', who under the ordinary mode of



succession would necessarily be a relation of the deceased, should be treated as a tenant of the premises subject, however, to the decision by the court in default of agreement. The words "as may be decided in default of agreement by the Court" as appearing in Section 5(11)(c)(i) are not without significance. These words in our view have been incorporated to meet a situation where there are more than one heirs. In such an eventuality the landlord may or may not agree to one or the other of them being recognised as a 'tenant'. In case of such disagreement the court has to decide who is to be treated as 'tenant'. Therefore, if 'heir' is to include a legatee of the will then the above-quoted words cannot be applied in case of a tenant who leaves behind more than one legatee for in that case the wishes of the testator can get supplanted, on the landlord's unwillingness to respect the same, by the ultimate decision of the court. In other words, in case of a testamentary disposition, where the wish or will of the deceased has got to be respected a decision by the court will not arise and that would necessarily mean that the words quoted above will be rendered nugatory. What we want to emphasise is it is not the heirship but the nature of claim that is determinative. In our considered view the legislature could not have intended to confer such a right on the testamentary heir. Otherwise, the right of the landlord to recover possession will stand excluded even though the original party (the tenant) with whom the landlord had contracted is dead. Besides, a statutory tenancy is personal to the tenant. In certain contingencies as contemplated in Section 5(11)(c)(i) certain heirs are unable to succeed to such a tenancy. To this extent, a departure is made from the general law."

7 Apart from aforesaid dictum of law, the provisions as contained under Section 57 read with Clause (1) Schedule (III) of the Indian Succession Act, 1925 also bar transfer of tenancy or bequeathing the tenancy right under the WILL."



14. In view of above, this Court finds that the plaintiffs cannot claim to have become tenants on the basis of Will executed by Jaswant Singh. Transfer of tenancy rights by a tenant under a testamentary disposition cannot be held to be a valid transfer. The same cannot, in law, confer any tenancy right on the transferee. Thus, on the day the sale deed was executed, the suit was filed, and the decree was granted, plaintiffs were not having status over the suit property as tenants, and thus, had no right to pre-empt the sale deed.

15. In view of above, finding no merit in the present appeal, the same is ordered to be dismissed. Judgment and decree passed by the Lower Appellate Court dismissing the suit filed by the plaintiffs, is maintained though for different reasons.

16. Pending application(s), if any, shall also stand disposed off.

March 19, 2025

Dpr

(Pankaj Jain)

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No