

PETITIONER:
BHOOP ALLEGED SON OF SHEO

Vs.

RESPONDENT:
MATADIN BHARDWAJ SON OF LAKMI CHAND

DATE OF JUDGMENT 04/12/1990

BENCH:
AHMADI, A.M. (J)
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AHMADI, A.M. (J)
SHETTY, K.J. (J)

CITATION:
1991 AIR 373 1990 SCR Supl. (3) 410
1991 SCC (2) 128 JT 1990 (4) 594
1990 SCALE (2) 1204

ACT:
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.

HEADNOTE:

Sub-Judge, 1st Class, Mahendergarh, in a suit, granted a preemption 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 Assignment 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 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, Mahendergarh 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 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 deposited within the time allowed by the decree and so the decreeholder 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 re-

lates to the transferability of the decree and the maintainability of the execution proceedings.

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Dismissing the appeal, this Court,

HELD: The right of pre-emption is generally conferred on a cosharer 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 rounded 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. Saliar, [1909] ILR 31 An 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.

JUDGMENT: