

Munshi *Hanuman Parshad* and Munshi *Kashi Parshad*, for the appellant.

The *Senior Government Pleader* (*Lala Juala Parshad*), for the respondent.

The judgment of the Court (after stating the facts of the case) was as follows :

In our opinion the Court has taken an erroneous view of the law. All that s. 260 declares is that "any suit brought against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed." The law will not, therefore, in strictness apply to this case, where it is the certified purchaser who is suing to enforce his alleged purchase, and where the objection is taken by the defendant who is in possession. The section should be construed literally and applied strictly. The Court will not apply s. 260 so as to assist the certified purchaser to enforce his claim against the party in possession, by relieving him from the necessity of showing the justice of his claim or excluding inquiry as to its fraudulent character. This view of the law is supported by the Privy Council rulings in *Buhuns Koonwur v. Lalla Buhoree Lall* (1), and in *Lokhee Narain Roy v. Kalypuddo Bandopadhya* (2). We remand the case for trial under s. 354, Act VIII of 1859, of the issue whether plaintiff or defendant was the real purchaser at auction of the property in suit.

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JAN  
MUHAMMAD  
v.  
ILAHI BAKSH.

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## APPELLATE CIVIL.

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August 21.

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(*Mr. Justice Turner and Mr. Justice Spankie.*)

MAHABIR PARSHAD AND ANOTHER (PLAINTIFFS) v. DEBI DIAL AND OTHERS (DEFENDANTS).\*

*Pre-emption—Conditional Decree.*

Where a share in a certain patti was sold by the holder of the share to a stranger, and three persons, holding equal shares in the patti, were equally entitled under the village administration-paper to the right of pre-emption of the share,

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\* Special Appeal, No. 279 of 1876, against a decree of the Judge of Gorakhpur, dated the 23rd December, 1875, affirming a decree of the Munsif of Deoriya, dated the 8th September, 1875.

(1) 10 B. L. R. 159; S. C., 13 W. R. 157. also *Mirza Khyrat Ali v. Mirza Syfoollah Khan*, 8 W. R. 130; and *Muthoora Nath Doss v. Raikomul Dossee*, 24 W. R. 278.

(2) L. R., 2 Ind. App. P. C. 154; see

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held that such persons were each entitled to have the sale made to him to the extent of one-third of the share.

The decree of the High Court in this suit specified a time within which each party to the suit should pay into court a proportion of the purchase-money, and declared that, if either failed to pay such proportion within time, the other of them making the further deposit within time should be entitled to the share of the defaulter (1).

This was a suit to enforce a right of pre-emption. In a certain mauza, in a patti of 5 annas 4 pies, the following persons each owned an 8-pie share, *viz.*, Darsistman, Duliman, Debi Dial, and Mahabir Parshad. Debi Dial sold his share to Musafir and Jan, strangers, by a deed dated the 15th September, 1874, in which the purchase-money was entered as Rs. 551. Under a condition in the village administration-paper relating to pre-emption, Darsistman, Duliman, and Mahabir Parshad were equally entitled, as co-sharers, to the right of pre-emption. On the 22nd July, 1875, Duliman sued Debi Dial, Musafir, and Jan to enforce his right. The parties to this suit filed a compromise on the 24th July, wherein it was agreed that Duliman should obtain possession of the share on payment of Rs. 551 on or before the 13th November, 1875. On the 9th August, 1875, Mahabir Parshad and Darsistman instituted the present suit against Debi Dial, Musafir, Jan, and Duliman to enforce their right of pre-emption, alleging that the actual price of the property was Rs. 199. The Court of first instance decided the two suits together, giving Duliman a decree for possession of one moiety of the property on payment of Rs. 275-8-0 on or before the 13th November, 1875, and Mahabir Parshad and Darsistman a decree for possession of the other moiety on payment of Rs. 150 on or before the same date.

On appeal by Duliman the lower appellate Court gave him a decree for possession of the whole 8-pie share on payment of Rs. 275-8-0 within thirty days from the date of the decree. The appeal preferred by Mahabir Parshad and Darsistman was dismissed. On special appeal by them to the High Court it was contended that they were entitled to a decree in proportion to their shares in the patti.

Munshi *Sukh Ram*, for the appellants.

Babu *Sital Parshad* and Babu *Jogendro Nath*, for the respondents.

(1) See next case.

The Court remanded the case to the lower appellate Court in the following terms :

It having been found that the plaintiffs and Duliman were all co-sharers, a right of pre-emption accrued to all of them, and equitably they will be entitled each to have the sale made to him to the extent of one-third of the property sold. We have not to decide whether such a right is to be divided in proportion to the extent of the shares or in proportion to the number of persons entitled to pre-emption (1), for in this case three persons assert their right to pre-emption and the shares to which the right is appurtenant are equal. We cannot, however, pass a final decree until the lower appellate Court has determined what was the price actually paid for the share. This issue we remit under s. 354 for trial.

The lower appellate Court found that the price actually paid for the share was Rs. 300.

The case having been returned to the High Court, judgment was delivered as follows :

We accept the finding on the issue remitted, and the decree will be modified accordingly. The appellants are entitled to pay into court within one month from this decree Rs. 200 and obtain a two-thirds share, and Duliman will pay into court within the same period Rs. 100 and obtain a one-third share ; and if either the appellants or Duliman fail to pay in the amounts within the month, the other of them making the further deposit within the time shall be entitled to the share of the defaulter.

## APPELLATE CIVIL.

(*Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Oldfield.*)

HINGAN KHAN AND OTHERS (DEGREE-HOLDERS)<sup>b</sup>, GANGA PARSHAD AND OTHERS (JUDGMENT-DEBTORS).\*

*Pre-emption—Conditional Decree—"Final" Judgment and Decree—Execution of Decree.*

Where the plaintiff in a suit for pre-emption was granted a decree subject to the payment of the purchase-money within a fixed period, and failed to comply

\* Miscellaneous Special Appeal, No. 81 of 1875, against an order of the Judge of Azamgarh, dated the 4th September, 1875, reversing an order of the Munsif of Muhamadabad, dated the 15th July, 1875.

(1) Where two persons had, by vicinage, an equal right to pre-emption, the property was equally divided between them—*Misir Khem Kurun v. Misir Seeta Ram*, II. C. B., N.-W. P., 1870, p. 257.

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