1876

DEOJIT v. PITAMBAR.

the Contract Act, s. 29, an agreement is void if its meaning is not certain or capable of being made certain, and under s. 93 of the Evidence Act, where the language of a deed is, on its face, ambiguous or defective, no evidence can be given to make it certain. The Courts below have, however, found that the deed was not proved, and by this finding we are bound. Our observations on the other issue are intended to impress upon money-lenders that distinctness in the description of property mortgaged is essential. The appeal fails and is dismissed with costs.

APPELLATE CIVIL.

1876
August 16.

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

NARAIN SINGH (DEFENDANT) *v.* MUHAMMAD FARUK (PLAINTIFF).*

Act XXIII of 1861, *s.* 14—*Pattidari Estate—Pre-emption—Act XVIII of* 1873, *s.* 177—*Act XIX of* 1873, *s.* 188.

The provisions of s. 14, Act XXIII of 1861, are not applicable, where the land is sold in execution of a decree of a Revenue Court.

Held, on the assumption that, where land is sold in execution of such a decree, a claim to the right of pre-emption can be preferred under the provisions of s. 177 of Act XVIII of 1873 and s. 188, Act XIX of 1873, that such claim can only be preferred where the land is a patti of a mahál, not where it is part only of a patti of a mahál.

Semble that, where land which is a patti of a mahál is sold in execution of such a decree, a claim to the right of pre-emption can be preferred under the provisions of s. 177, Act XVIII of 1873, and s. 188, Act XIX of 1873.

THIS was a suit to establish the plaintiff's right to certain land forming portion of a patti of a pattidari mahál. The suit was based upon the provisions of s. 14, Act XXIII of 1861. The land was sold to the defendant on the 20th August, 1874, in execution of a decree of a Revenue Court made in a suit under cl. 2, s. 1, Act XIV of 1863. The plaintiff preferred a claim to take the land at the price it was knocked down to the defendant, under the provi-

* Special Appeal, No. 666 of 1876, from a decree of the Judge of Azamgarh, dated the 16th March, 1876, reversing a decree of the Munsif of Nagra, dated the 6th December, 1875.

1876

NARAIN SINGH v. MUHAMMAD FARUK.

sions of s. 14, Act XXIII of 1861, but his claim was disallowed. The Court of first instance held that the suit was not maintainable, being of opinion that s. 14, Act XXIII of 1861, applied only to sales in execution of decrees made by Civil Courts, and that Act XVIII of 1873 did not provide for the preferring of pre-emptive rights on the occasion of sales in execution of decrees made by the Revenue Courts under that Act. The lower appellate Court held that the suit was maintainable, having regard to s. 177, Act XVIII of 1873, and s. 188, Act XIX of 1873.

Against this decision the defendant appealed to the High Court.

Pandit *Bishambar Nath* and Pandit *Ajudhia Nath*, for the appellant.

Mr. *Mahmood*, Munshi *Hanuman Parshad*, and Shah *Assad Ali*, for the respondent.

The judgment of the Court, so far as it is material for the purposes of this report, was as follows :—

The suit was instituted under s. 14, Act XXIII of 1861, but that section cannot apply to sales in execution of decrees by Revenue officers. The Act is supplementary to and amends Act VIII of 1859, which is purely a Code of Civil Procedure. The Rent Act X of 1859 provided for the execution of decrees under the Act by Courts presided over by Revenue officers, and Act XIV of 1863, under which the suit was brought and decreed, and the property now in suit was sold in execution on the 20th August, 1874, is by s. 18 declared to be a part of Act X of 1859. Hence it is quite clear that s. 14, Act XXIII of 1861, would not apply to the present suit, and no claim to pre-emption could be asserted under it. Since the decree under Act XIV of 1863, Act X of 1859 has been repealed, and if the present Rent Act admits of the assertion of a pre-emptive title in cases of sale in execution of decrees, the suit should have been founded on some section in that Act. The Munsif possibly might have thrown out the suit as based on s. 14, Act XXIII of 1861, which did not apply ; but the plaint distinctly stated that the sale took place in the execution of a decree of a Revenue Court, and the Munsif made it an issue whether the plaintiff had any right of pre-emption in such a case. In making this issue we think that the

first Court was right, as the nature of the claim was apparent, and the defendant would not be prejudiced on the merits of the case, if it could be successfully urged; and on the other hand if the Rent Act provided no means of asserting a pre-emptive title in sales in execution of decrees the defendant had a complete answer to the suit. The lower appellate Court's judgment opens with the remark that the plaintiff brought his suit under the Muhammadan law in respect of pre-emption. But this is not so; no such claim was asserted. The suit rests upon some assumed right as a co-sharer to claim at a sale in execution of a decree by a Revenue Court to purchase the property sold at the price it was knocked down to the last bidder, and the plaintiff asserts that he made the claim at the time of sale, and fulfilled all the conditions of the sale, but his claim was disallowed. It was contended that s. 177, Act XVIII of 1873, and s. 188, Act XIX of 1873, applied to the case. S. 177 of the former Act gives power to the Board of Revenue to order the sale of immoveable property under certain conditions, and if the property be sold, the sale shall be made under the rules in force for the sale of land for arrears of land revenue. The only reference to pre-emption in Act XIX of 1873 is to be found in s. 188. It is contended that, as the sale is concluded before the claim to pre-emption can be made, the claim itself is not made under any rules for the conduct of sales. We should, however, be disposed to disallow this contention. It is not, however, necessary on the present occasion to determine the point. S. 188 provides that, when any land sold under s. 166 is a patti of a mahál, any recorded co-sharer, not being himself in arrear with regard to such land, may, if the lot has been knocked down to a stranger, claim to take the said land at the sum last bid. From this section, and s. 166, it is clear that the land must be a patti of a mahál and not a portion of a patti; and this contention of the appellant's pleaders appears to us to dispose of the suit, in which the land claimed is only a portion of a patti. We, therefore, think that this suit, founded on an alleged right to claim as a pre-emptor in a sale in execution of a decree of a Revenue Court, under rules for the conduct of such sales, fails, and was properly dismissed by the first Court. We, therefore, decree the appeal, and reverse the decision of the lower appellate Court, restoring the decree of the Munsif with costs.