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THE MUNICIPAL COMMITTEE OF MORADABAD
v.
CHATRI SINGH.

that the suit then before the Court was not brought for damages, the Court held that the provisions of s. 31, Act VI of 1868, respecting notice of action were inapplicable to it. We agree with that ruling. The object of requiring such notice appears to be to enable the Committee or those acting under them to tender compensation and so prevent the necessity for a suit. In the suit now before the Court no damages are claimed. For the reasons we have stated we disallow the plea.

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August 3.

APPELLATE CIVIL.

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

FARZAND ALI (DEFENDANT) v. ALIMULLAH (PLAINTIFF).*

Act XXIII of 1861, s. 14—*Pre-emption—Pattidari Estate—Co-sharer—Stranger—Auction-purchaser.*

A share-holder in one patti of a pattidari estate is not a "stranger" with reference to a share-holder in another patti of the estate, within the meaning of that term in s. 14, Act XXIII of 1861.

The auction-purchaser at a sale in execution of a decree of a share in a pattidari estate seeking to establish his right as against a person whose claim to the right of pre-emption under the provisions of s. 14, Act XXIII of 1861, has been allowed and in whose favour the sale has been confirmed, cannot maintain a suit for possession of the share, but should sue for a declaration that the person claiming the right of pre-emption has no such right and to set aside the sale (1).

THIS was a suit for a declaration of the plaintiff's right to, and to obtain possession of, a certain share in a pattidari estate. The share had been knocked down at a sale in execution of decree to the plaintiff, who was a co-sharer in the estate, but not a co-sharer in the patti in which the share in suit was situated. The defendant, who was a co-sharer in that patti, had claimed to take the share sold, under the provisions of s. 14, Act XXIII of 1861. The officer conducting the sale had allowed the defendant's claim, and the Court executing the decree had confirmed the sale in his favour.

* Special Appeal, No. 318 of 1876, from a decree of the Judge of Ghazipur, dated the 21st January, 1876, reversing a decree of the Munsiff, dated the 16th September, 1875.

(1) See *Tasuduk Ali v. Muhsud Ali*, H. C. R., N.-W. P., 1874, p. 289; and *Shib Sahai v. Thika Ram*, H. C. R., N.-W. P., 1875, p. 97.

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The Court of first instance held that the plaintiff was a "stranger" within the meaning of s. 14, Act XXIII of 1861, and that the defendant was therefore entitled to take the share, and dismissed the suit. The lower appellate Court held that the plaintiff was not a "stranger" within the meaning of that section and gave him a decree.

On special appeal by the defendant to the High Court it was contended that the suit was not maintainable, and that the lower appellate Court had placed a wrong construction on the provisions of s. 14, Act XXIII of 1861.

Munshi *Hanuman Parshad*, for the appellant.

Pandit *Bishambar Nath*, *Lala Lalta Parshad*, and *Shah Assad Ali*, for the respondent.

The following judgments were delivered by the Court:—

STUART, C. J.—The judgment of the Judge is substantially right. This is really not a case where the defendant shows any exclusive right of pre-emption and where the plaintiff is a "stranger," but of competitive pre-emption, if I may be allowed the expression, the plaintiff's claim in respect of title being quite as good as that of the defendant, while he has priority by purchase. As pointed out by the Judge, although the plaintiff did not live in the same patti as the vendor, but in another patti, he was a member of the co-parcenary, and therefore his claim under s. 14 of Act XXIII of 1861 must be allowed, and the sale to the defendant declared invalid. But the plaintiff cannot benefit by this judgment, and obtain possession, until the sale to him has been confirmed. I am therefore of opinion that, with this slight modification, the appeal should be dismissed, and with costs, the plaintiff, respondent, having substantially succeeded, and defendant treating him as a stranger and denying his right as a member of the co-parcenary.

OLDFIELD, J.—The plaintiff is himself a member of the co-parcenary, being a sharer in another patti of the estate. The right of pre-emption can only be asserted against a stranger, *i. e.*, one who is not a co-sharer or member of the co-parcenary. A sharer in one of the pattis in a pattidari estate cannot be said to be a stranger with reference to the co-sharers in another patti, and the section gives no preferential rights of pre-emption among themselves between co-sharers in the same patti and sharers in other pattis,

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who come under the denomination of members of the co-parcenary. But the plaintiff can, however, only obtain a declaration that the defendant has no right of pre-emption as against him, and that the sale to the defendant is invalid, but he cannot obtain possession until the sale has been confirmed in his favour and made absolute. He has taken no steps to effect this by moving the Court which ordered the sale to confirm it in his favour, which is the proper remedy open to him. I would modify the decree of the lower appellate Court by declaring that the defendant has no right of pre-emption as against plaintiff, and that the sale to the defendant is invalid.

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August 11.

APPELLATE CIVIL.

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

DARSHAN SINGH AND OTHERS (DEFENDANTS) v. HANWANTA (PLAINTIFF).*

Act VIII of 1871 (Registration Act), s. 17, cl. (2)—Registration—Mortgage.

A bond which charged immoveable property with the payment on a day specified therein of Rs. 99, the principal amount, and Rs. 6, interest thereon, should have been registered under the provisions of cl. (2), s. 17, Act VIII of 1871 (1).

THE plaintiff in this suit claimed to recover the amount of a bond dated the 21st March, 1871, from the defendants personally and by the sale of their property situated in mauza Gutla, which he alleged was charged in the bond with the payment of the amount. The defendants, described in the bond, which was unregistered, as residents of mauza Gutla, bound themselves to pay the plaintiff described as a resident of the same mauza, on the 5th June, 1871, the sum of Rs. 99, together with interest thereon at 2 per cent. per mensem, and with such payment they charged "their house and landed property." The suit was instituted on the 15th September, 1875.

The Court of first instance held that the plaintiff's claim against the defendants personally was barred by limitation, and that his claim against their property situated in mauza Gutla was not

* Special Appeal, No. 674 of 1876, from a decree of the Judge of Agra, dated the 18th March, 1876, reversing a decree of the Munsif, dated the 27th November, 1875.

(1) So held in *Dhurmdoo Narain* to the corresponding provisions of s. 17, *Singh v. Nund Lall Singh*, H. C. R., Act XX of 1866. N.-W. P., 1874 ; p. 257, with reference