

1880  
April 2.

## APPELLATE CIVIL.

*Before Mr. Justice Pearson and Mr. Justice Straight.*

TEJ SINGH (PLAINTIFF) v. GOBIND SINGH AND OTHERS (DEFENDANTS).\*

*Sale in Execution of decree—Pre-emption—Act X of 1877 (Civil Procedure Code), s. 310.*

A co-sharer in undivided immoveable property of which a share is sold in the execution of a decree does not, under s. 310 of Act X of 1877, acquire the right of pre-emption as against a stranger to whom such share has been knocked down, by merely asserting such right at the time of sale, and fulfilling the conditions of sale required by ss. 306 and 307 of that Act. He must bid at the sale and as high as the stranger before he can acquire a right of pre-emption under that section.

On the 21st January, 1878, two shares of an undivided share of a village called Jarara were put up to auction-sale in the execution of a decree, and were purchased by the defendants in this suit. At the time of sale the plaintiff in this suit, who was a co-sharer in such undivided share, asserted his right of pre-emption in respect of the property sold; and he, as well as the defendants, paid the deposit required by s. 306 of Act X of 1877, and the full amount of the purchase-money as required by s. 307 of that Act. The plaintiff did not bid at all for the property at the sale. The Court executing the decree rejected the plaintiff's claim to pre-emption and confirmed the sale in favor of the defendants. The plaintiff thereupon brought the present suit against the defendants to establish his right of pre-emption under s. 310 of Act X of 1877 in respect of the property. The Court of first instance gave him a decree. On appeal by the defendants, the lower appellate Court held that the suit was not maintainable and dismissed it, its reasons for so holding being as follows: "In the view of the appellate Court the meaning and substance of s. 310, Act X of 1877, are not those that the Court of first instance has described; on the contrary, the appellate Court is of opinion that the aim and substance of that section is merely this, *viz.*, that the share-holder ought also to bid at auction, and that, if the amount of the last bid by a stranger and the share-holder is the same, preference of purchase should be given to the

\* Second Appeal, No. 1142 of 1879, from a decree of Maulvi Farid-ud-din Ahmad, Subordinate Judge of Aligarh, dated the 11th July, 1879, reversing a decree of Munsif Mata Prasad, Munsif of Akraha, dated the 22nd April, 1879.

share-holder; that is to say, if the amounts bid by the stranger and the share-holder at auction be equal, it shall be knocked down to the share-holder. The rule as to the right of pre-emption in *partidari* villages which was fixed under s. 14, Act XXIII of 1861, with a view to assimilating it to Act I of 1811, has been annulled by this section: and since it is admitted that the plaintiff made no bid at auction, the defendant alone having bid, and the officer conducting the sale knocked the same down to the bid of the latter, the plaintiff under such circumstances is in no way entitled to bring a suit in the Civil Court on the ground of pre-emptive right by virtue of his having filed an application for pre-emption before the officer conducting the sale on the date of the sale, and having paid earnest-money, and having paid the remainder of the purchase-money within the period of fifteen days, and for the Court to have made a decree for maintenance of pre-emptive right."

The plaintiff appealed to the High Court.

*Babu Jogindro Nath Chaudhri*, for the appellant.

*Pandit Bishambhar Nath*, for the respondents.

The judgment of the Court (PEARSON, J., and STRAIGHT, J.) was delivered by

PEARSON, J.—The construction put by the lower appellate Court on the terms of s. 310, Act X of 1877, appears to us to be correct. The appeal, therefore, fails and is dismissed with costs.

*Appeal dismissed.*

## FULL BENCH.

*Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.*

LACHMAN DAS (PLAINTIFF) v. DIP CHAND (DEFENDANT).\*

*Optional and compulsory registration—Act VIII of 1871 (Registration Act)—Act III of 1877 (Registration Act), s. 50—Act I of 1868 (General Clauses Act), s. 6—Registered and unregistered document.*

*Held*, in the case of a document executed while Act VIII of 1871 was in force, the registration of which under that Act was optional, and which was not registered

\* Second Appeal, No. 402 of 1879, from a decree of H. G. Keene, Esq., Judge of Agra, dated the 16th January, 1879, modifying a decree of Maulvi Munir-ud-din, Muasif of Jalesar, dated the 22nd November, 1878.

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