

*Nath*, is not correct, we dismiss the contention with the observation that we see no ground for departing from the construction of the Mitakshara which has hitherto been accepted. We accordingly find that the respondents have failed to show that Chandī Din was the heir of Chaudri Naubat Ram; and we find, in fact, that Chandī Din was not the heir of Chaudhri Naubat Ram, and consequently the respondents have failed to prove that they are entitled to maintain this action. Under these circumstances, it is not necessary for us to express any opinion on the various questions of limitation and estoppel which have been argued in this case. We decree the appeal with costs against the respondents and the estate of the deceased plaintiff Nawab Mashuk Mahal. The suit will stand dismissed.

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CHANDI DIN.

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*Appeal allowed.*

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Brodhurst.*

AGAR SINGH (DEFENDANT) v. RAGHURAJ SINGH AND ANOTHER  
(PLAINTIFFS). \*

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February 23.

*Pre-emption—Concealment by vendor and vendee of actual price—Evidence—Market-value of property sold.*

In suits for pre-emption, where the Court has come to the conclusion that the price alleged in the deed of sale is not the true contract price, and where it cannot ascertain the true price by reason either that the vendor and vendee refuse to disclose the same by their own evidence, or their evidence cannot be believed, the Court should ascertain, if possible, what was the market-price of the property in dispute at the time of the sale, and accept that market-price as the probable price agreed upon between the parties. It is for the plaintiff either to show what was the actual contract price, or to give substantial evidence on which the Court can act, showing what was the market-value at the time of the sale.

THIS was a suit to enforce a right of pre-emption based on the *wajib-ul-arz* of a village. The facts of the case are stated in the judgment of Edge, C. J.

Lala Lalta Prasad, for the appellant.

Lala Juala Prasad, for the respondents.

EDGE, C. J.—This is an appeal in a pre-emption suit against the judgment of the Subordinate Judge of Gorakhpur, by which he decreed the plaintiff's claim, and found that Rs. 475 was the

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\* Second Appeal, No. 371 of 1886, from a decree of Maulvi Shah Ahmad-ullah, Subordinate Judge of Gorakhpur, dated the 5th May, 1885, confirming a decree of Maulvi Abdurrazzak, Munsif of Bansi, dated the 8th January, 1885.

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price to be paid by the plaintiff-pre-emptor. The facts of the case are shortly these. The vendee, who is a stranger, alleged that the contract price was Rs. 775, and put in evidence the sale-deed. The plaintiff, on the other hand, alleged that the contract price was Rs. 75, and he gave evidence that a share in a neighbouring mahal had been sold for Rs. 75. The vendee and the vendor were not called to give evidence in support of the price alleged in the deed. The Subordinate Judge came to the conclusion that the price alleged in the sale-deed was not the true contract price, and he found, apparently without any evidence, that Rs. 475 was the contract price or the market value.

Under these circumstances we have to consider what should be done in this and in similar cases. It appears to me that in cases of this kind, when the Judge has come to the conclusion that the price alleged in the sale-deed is not the true contract price, and where he cannot ascertain what, in fact, was the contract price, he should ascertain, if possible, what was the market-price at the time of the sale, and for these reasons:—In the cases I am supposing, the vendor and the vendee either refuse to disclose by their own evidence what was the true price, or their evidence, with regard to the price, for some good reasons cannot be believed. In such cases it is frequently impossible for the plaintiff to give direct evidence as to what the true contract price was; because, in cases in which a fictitious price is inserted in the sale-deed, it is done with the intention of defeating the rights of the persons entitled to pre-emption, and the true contract price is concealed. It cannot be expected that in such cases the plaintiff would be able to give direct evidence of the actual contract price. It appears to me that in these cases the plaintiff should be prepared with the best evidence he can obtain as to what was the market-value of the share at the time of the sale. It would be *doing* no injustice to the vendor or the vendee, who refused to disclose what the true price was, or whose evidence for some good reason is not believed, to treat the market-value, which a prudent man would give for the share, as the price which was most probably agreed upon. In such cases the Judge should ascertain what was the market-value at the time of the sale, and accept that market-price as the probable price agreed upon between the parties.

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In this particular case there was, as I have said, evidence on behalf of the plaintiff that Rs. 75 had been the price given for a share in an adjoining mahal. That evidence was not relied upon by the Subordinate Judge as correctly showing what was the market-value at the time of the sale. I think that this case had better go back to enable the Court below to hear further evidence, tendered by either party, as to what was the market-value of the share at the time of the sale. I do not propose that the Judge below should have to reconsider his finding that Rs. 775 was not the contract price, for that has already been decided; but I think it right that the parties should have an opportunity of putting forward some further evidence as to what the market value was. We have allowed a remand in this particular case, but in future we ought to hesitate before sending a case of this kind back. It is a part of the plaintiff's case to show either what was the actual contract price or to give substantial evidence, on which the Judge can act, showing what was the market value. It is necessarily a part of the plaintiff's case that the price should be fixed by the decree of the Judge. For unless the Judge is in a position to fix the price, it is obvious that the decree would be ineffective and a nullity. In future, in cases similar to the present, if the plaintiffs are not prepared to give substantial evidence, on which a Judge can act, as to the market value, those plaintiffs will deserve to have their cases dismissed. In the present case, however, an issue must be sent down to the Subordinate Judge to take further evidence as to the market value of the share at the time of the sale. Ten days will be allowed for objections.

BRODHURST, J.—I concur in the order proposed by the learned Chief Justice. (1)

*Issue remitted.*

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(1) See *Sheopargash Dube v. Dhanraj Dube*, *ante*, p. 225.