1887
January 6.

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

SHEOPARGASH DUBE (DEFENDANT) v. DHANRAJ DUBE AND OTHERS (PLAINTIFFS).*

Pre-emption—Purchase-money—Evidence—Burden of proof.

In suits for pre-emption, where the amount of the consideration for the sale is in dispute, the rule as to the burden of proof is that, in the first instance, the plaintiff who alleges the price stated in the deed of sale to be fictitious must give some *primâ facie* evidence leading to the presumption that the price so stated was not the true price. Having done that, it then lies upon the vendor and vendee to give such an explanation by evidence as will go to rebut the presumption raised by the plaintiff's evidence. In the majority of cases the only *primâ facie* evidence which the plaintiff pre-emptor could produce would be either evidence showing that the vendor or the vendee had made an admission that the price was fictitious, or else evidence showing that the market-value of the property was so much less than the alleged price as would lead any reasonable man to come to the conclusion that the alleged price was not the real price.

Where the price stated in the deed of sale was nearly five times the market-value of the property sold, and the purchaser gave no explanation showing why he was willing to buy the property at a price apparently so extravagant—*held* that there was sufficient evidence upon which to find that the price alleged in the contract was fictitious.

Bhagwan Singh v. *Mahabir Singh* (1) followed.

The facts of this case are sufficiently stated for the purposes of this report in the judgment of Edge, C. J.

The Hon. Pandit *Ajudhia Nath* and Lala *Juala Prasad*, for the appellant.

Mr. *G. T. Spankie* and Mr. *Habib-ullah*, for the respondents.

EDGE, C. J.—This is an appeal from the judgment of the Judge of Gorakhpur, dated the 22nd December, 1885, by which he modified the judgment of the Court below. This was a pre-emption suit, and the Judge of Gorakhpur, in appeal, held that the value of the property is only Rs. 250, and that the price set out in the sale deed was a fictitious price. In second appeal we have to consider whether there was evidence upon the record from which the Judge of Gorakhpur could have arrived at that conclusion. On the question of burden of proof in these cases I have one or two observations to make. It appears to me that in these

* Second Appeal No. 280 of 1886, from a decree of R. J. Leeds, Esq., District Judge of Gorakhpur, dated the 22nd December, 1885, reversing a decree of Maulvi Shah Ahmad-ullah, Subordinate Judge of Gorakhpur, dated the 24th June, 1885.

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cases the rule expressed in the judgment delivered by my brother Brodhurst and Mr. Justice Mahmood in *Bhagwan Singh* v. *Mahabir Singh* (1) is a correct rule to follow. That rule is that, in the first instance, the plaintiff, who alleges the price to be fictitious, must give some *primâ facie* evidence which would lead to the presumption that the price mentioned in the sale-deed was not the real or true price. Having done that, it lies upon the vendor and vendee, who set up the price as true and genuine, to give such an explanation by evidence as will go to rebut the presumption raised by the plaintiff's evidence. As a general rule, how can that be done? The plaintiff in a case of this kind would not be a party to the transaction out of which the sale to the stranger arose. He would not, as a rule, have any actual knowledge of what the real price was. In the majority of cases, the only *primâ facie* evidence which the plaintiff-pre-emptor could produce would be either evidence showing that the vendor or the vendee had made an admission that the price was fictitious, and this could only happen in rare cases, or evidence showing that the market-value of the property was so much less than the alleged price as would lead any reasonable man to come to the conclusion that the alleged contract price was not the real price. In this particular case, assuming that the Judge of Gorakhpur was right in finding that the market-price was Rs. 250, we find that the contract price was very nearly five times that amount; in other words, that instead of this property being sold at about sixteen years' purchase, it was alleged to have been sold at something like eighty years' purchase. I think these circumstances would naturally lead the Judge to infer that the defendant-purchaser should be called upon to give some reason why he was willing and prepared to sacrifice his money in order to buy this property at a price apparently so extravagant. The defendant-purchaser might possibly have shown that there was some special reason why he was willing to give so large a price in order to buy a share in that particular village, as, for instance, that he was, from the propinquity of other property of his, desirous of obtaining the status of a co-sharer in that particular village; or that he was doubtful of the stability of his debtor, the vendor, and so purchased this property, even at a heavy sacrifice, in order to

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obtain something tangible in the way of payment. In fact, many other reasons might possibly be given to satisfy the Judge that the transaction, although *primâ facie* a questionable and doubtful one, was a genuine transaction. In this particular case the defendant relied simply upon two bonds. It appears to me that those bonds did not re-shift the burden of proof upon the plaintiff, and that the production of the bonds was only one of the steps the purchaser should have taken in attempting to satisfy the Judge that the alleged price was the real one. He ought to have explained how it was that he was willing to forego some twelve hundred and odd rupees in order to obtain a property worth Rs. 250 only.

In my opinion, looking to the fact that the defendant gave no explanation at all of the circumstances under which he was willing to give five times its market-value for the property, there was sufficient evidence before the Judge of Gorakhpur upon which to find that the alleged contract price was a fictitious and not a genuine price. As to the market-price there was certainly evidence before the Judge. It appears that, with the consent of the parties, the *pattidari* statements and other documents put in evidence in one case were to be treated as evidence in all the cases. Is appears from them that a two pies share is equal to eight bighas, the value of which, calculated at Rs. 30 per bigha, will be about Rs. 240. In confirmation of this the plaintiff produced two sale-deeds, one of 1881, in which another sharer in this village had sold his two and one-third pies share for Rs. 199, and the other of March, 1884, by which a one and a half pies share of this village, being valued at Rs. 200, was exchanged. If I had decided the case, I would not have solely relied upon these deeds, but they were confirmatory evidence of the conclusion at which the Judge had arrived from the *pattidari* statements.

I am therefore of opinion that there was sufficient evidence before the Judge to entitle him to come to the conclusion he did. The appeal is dismissed with costs.

BRODHURST, J.—For the reasons stated by the learned Chief Justice I concur with him in dismissing the appeal with costs.

Appeal dismissed.