1888

BHUPAL RAM v. LACHMA KUAR.

passed its judgment upon matters of evidence, has practically come to the conclusion that the plaintiff should not be allowed to have declaratory relief. I am afraid that the Court was wrong in thinking that there was a cause of action entitling the plaintiff to maintain such a suit. My opinion is that, if for no other reason, the solitary reason that this lady, Ganesh Kuar (who is admittedly living and a married daughter of the last full proprietor), is the donee, and that she is a married woman, her husband being still living, would be enough to require that a proper exercise of discretionary powers should not include a decree such as the plaintiff demanded. Therefore the conclusion of the judgment of the Court below is just the result which my learned brother Straight has arrived at, though by a different process of reasoning. It is the same as that at which I have also arrived, for the reason that the donee, Ganesh Kuar, is a married woman, and having the possibility of bearing a son, who would be the next reversioner to the full ownership of the estate of Ram Prasad. I agree in the judgment and the decree which my learned brother has made.

Appeal dismissed.

Before Mr. Justice Straight and Mr. Justice Mahmood.

1888

November 30.

KUAR DAT PRASAD SINGH (DEFENDANT) *v.* NAHAR SINGH AND OTHERS (PLAINTIFFS).*

Pre-emption—Wajib-ul-arz—Partition of village into separate mahâls—New wajib-ul-arz for each mahâl.

Cases where, after the division of a village area into separate mahâls for which no new *wajib-ul-arz* is drawn up, the old *wajib-ul-arz* for the whole area has been held to apply generally to the new mahâls, and such division has been held not to affect covenants existing between the co-sharers under such *wajib-ul-arz*, distinguished from cases where a new *wajib-ul-arz* has after the division been drawn up for each mahâl. *Gokal Singh* v. *Mannu Lal* (1) and *Jai Ram* v. *Mahabir Rai* (2) referred to.

THE facts of this case are stated in the judgment of Straight, J.

The Hon. *T. Conlan*, Mr. *G. E. A. Ross*, and The Hon. Pandit *Ajudhia Nath*, for the appellant.

---

* First Appeal No. 33 of 1887, from a decree of Babu Abinash Chandar Banerji, Subordinate Judge of Aligarh, dated the 6th December, 1886.

(1) I. L. R., 7 All. 772. (2) I. L. R., 7 All. 720.

1888

KUAR DAT PRASAD SINGH v. NAHAR SINGH.

Mr. *C. H. Hill*, Babu *Jogindro Nath Chaudhri* and Pandit *Sundar Lal*, for the respondents.

STRAIGHT, J.—This appeal relates to a suit for pre-emption, which was instituted by the plaintiffs-respondents before us, in the Court of the Subordinate Judge of Aligarh, upon the 30th June, 1886. The sale-transaction which the plaintiffs assailed was embodied in two sale-deeds of the 30th June, 1885, relating to several properties in which one Joti Prasad, who was defendant No. 1 in the Court below, was the vendor, and Kuar Dat Prasad Singh, minor, was the vendee, such minor through his guardian, Raja Ghansham Singh, being the second defendant in the present suit, and the appellant in this Court. I have said that the sale-deed of the 30th June, 1885, comprehended several properties. We, in the present litigation, are alone concerned with the property known as "Jawar Kharga Bahadur," because it is admitted that in respect of the other properties which were comprised in the sale-deeds, the plaintiffs had no right of pre-emption. The plaintiffs' case was that they, being co-sharers in patti Nahar Singh, which was one of the two pattis of mahál "Jawar Kharga Bahadur", had a preferential right to purchase that portion of the property sold to which I have referred, to the defendant, who was a co-sharer in one of the pattis of the mahál Kanetpur. The plaintiffs' father alleged that the consideration recited in the sale-deed was untruly recited; that the whole consideration paid in respect of the villages passed under those deeds was Rs. 12,000; and that, proportionately to the value of other properties sold, the amount that they should be called upon to pay in respect of that portion of the property to which they asserted their right of pre-emption, was Rs. 3,758-10-4.

The learned Subordinate Judge who tried the case has come to the conclusion that the plaintiffs established their rights of pre-emption; and secondly, that looking to the terms of the *wajib-ul-arz* and the relative value of the property in the villages adjacent to that in which the property sought to be pre-empted was situate, the amount the plaintiffs should be called upon by the decree to pay was Rs. 7,000. It is this decision of the Subordinate Judge which is

assailed by this first appeal before us. Only two contentions have been put forward by the learned counsel for the vendee, defendant-appellant; the first of which is that the plaintiffs had no better right in mauza "Jawar Kharga Bahadur" than the defendant; secondly, that the findings of fact recorded by the Subordinate Judge upon the question of consideration were unsustainable, and that the vendee, even if the plaintiffs' right were established, was entitled to a sum considerably in excess of that which had been declared by the learned Subordinate Judge. The first of these pleas can readily be disposed of, when I have stated one or two admitted facts in the case and then applied to the state of things connected with the village, the terms of the *wajib-ul-arz* governing the case. It appears that prior to the settlement which took place somewhere about the year 1872, there was a village area known as "Jawar," which at the settlement was divided into two mahals, one of which was called "Jawar Kharga Bahadur" and the other "Kanetpur." Almost synchronously with this division of the village into two mahâls, each of those two separated mahâls was divided into two pattis, that is to say, "Jawar Kharga Bahadur" was divided into patti "Joti Prashad" and patti "Nahar Singh," while the mahâl "Kanetpur" was divided into patti "Râja Tikam Singh" and patti "Tarf Karsan." Such being the divisions first for revenue purposes, and secondly for the convenience of the co-sharers, on the 4th March, 1873, a *wajib-ul-arz* was prepared; that is to say, there was one *wajib-ul-arz* prepared for the mahâl "Jawar Kharga Bahadur," and another for the mahâl "Kanetpur." With this latter *wajib-ul-arz* we are not concerned, for the determination of the plaintiffs' right of pre-emption rests upon the language of the *wajib-ul-arz* of mahâl "Jawar Kharga Bahadur." Now, the terms of that *wajib-ul-arz* are as follows:—"We, the proprietors, are competent to transfer our respective property, but the condition is that in the first instance it shall be transferred to our relatives (*bhaibandee*), who may be the sharers of another patti; if they refuse to purchase, then to the sharers of another patti, and when none of the sharers of the village should agree to take, then to any one else. In case of dispute about

1888

KUAR DAT PRASAD SINGH v. NAHAR SINGH.

the price against the pre-emptor, the price shall be settled according to the custom prevailing in the adjacent villages." I may at once say that it is unnecessary upon this portion of the case to go further into that *wajib-ul-arz*, because it seems to me that I have stated enough of it to lay a foundation for the view that I have formed as to the pre-emptive right of the plaintiffs. I have already stated that mahál "Jawar Kharga Bahadur" was divided into two pattis, one of which was patti Joti Prasad and the other patti Nahar Singh. Now Joti Prasad, whose name is mentioned there, is the vendor under the two sale-deeds of the 30th June, 1885, which are impeached by the present suit; and Nahar Singh, who is mentioned there, is one of the plaintiffs in the present suit, he having two brothers who are associated with him as plaintiffs. Now, in my opinion, by way of illustration of the mode in which it seems to me that this *wajib-ul-arz* should be applied, I should say that upon its terms, supposing Nahar Singh had proposed to sell any portion of his property, it would have been his duty to offer such portion for sale first to his brothers and then subsequently to Joti Prasad. Consequently, this present case being the converse of that position, it was incumbent upon Joti Prasad to offer the property to the present plaintiffs, and in not doing so he has infringed the pre-emptive right which by that *wajib-ul-arz* was conferred upon the plaintiffs, and the plaintiffs were entitled, as the Subordinate Judge has found, to come into Court and maintain the present suit. It must be distinctly understood that this view of this particular *wajib-ul-arz* in no way ignores any other decision that may have been passed in cases where one *wajib-ul-arz* having existed for the purposes of a common village area, and that village area having been divided into separate revenue areas, and no *wajib-ul-arz* having been drawn up, such *wajib-ul-arz* has been held to apply generally to the new area. The principle upon which that view of the law is based is to be found stated in the case *Gokal Singh* v. *Manna Lal* (1) and this principle, which is further elaborated in another ruling at page 720 of the same volume (*Jai Prasad* v. *Mahabir Rai*) is, that this pre-emptive right runs

(1) I. L. R. 7 All. 772. (2) I. L. R. 7 All. 720.

with the land, and the division of that land for the purposes of the revenue in no way affects any covenant or agreement existing between the co-sharers. So much for the first point. I am of opinion that the Subordinate Judge rightly held that the plaintiffs were entitled to maintain the suit.

Then comes the question as to whether the Subordinate Judge was right or wrong in his view of the consideration which ought to be recouped to the vendee by the plaintiffs upon taking the property. Mr. *Conlan* has called our attention to the terms of the *wajib-ul-arz* as they affect this part of the case, and it may be observed here that the passage as it is translated and printed in the paper-books is not correct. My brother Mahmood tells me that the exact translation is this:—"In cases of dispute about the price against the pre-emptor a price shall be settled according to the price of similar property prevailing in the adjacent villages." That is to say, the determination of the price of a particular property is to be determined according to the ordinary and general value of similar property prevailing in adjacent villages. The Subordinate Judge has found as a fact, in reference to this particular point, that Rs. 7,000 is the fair "market-value" of this particular portion of mahál "Jawar Kharga Bahadur," which was sold by Joti Prasad to Kuar Dat Prasad Singh, the vendee. It appears to me, therefore that it is wholly unnecessary to go into the extremely unpleasant matters with which a part of the learned Subordinate Judge's judgment is concerned, *viz.*, as to whether, aye or no, the total amount of consideration recited in the two sale-deeds of 30th June, 1885, was or was not truly represented, more especially as it has been held by the Full Bench in the case of *Karim Bakhsh* v. *Phula Bibi* (1) that these covenants with regard to price are covenants which run with the land. I may also add that, looking at the matter from this point of view, Mr. *Hill*, who had filed applications under s. 561, Civil Procedure Code, has stated that he does not purpose to support those objections. Consequently the matter stands thus, that we have nothing before us which would warrant us in coming to a conclusion

(1) I. L. R., 8 All. 102.

1888

KUAR DAT PRASAD SINGH v. NAHAR SINGH.

other than that of the learned Subordinate Judge, namely, that the fair market value of the property to be pre-empted is Rs. 7,000. Such being the view I take upon the two points raised by Mr. *Conlan* for the appellant, the appeal must be, and it is, dismissed with costs. The objections filed under s. 561 of the Civil Procedure Code are disallowed with costs.

MAHMOOD, J.—I have nothing to add to what has fallen from my learned brother, because I agree in all that he has said.

Appeal dismissed.

1889
March 15.

CRIMINAL REVISIONAL.

Before Mr. Justice Straight.

QUEEN-EMPRESS v. INDARJIT.

Act XIII of 1859, *preamble and s.* 2—*Wilful breach of contract—Construction of statute—Preamble not to be construed as restricting operation of enacting part—Summary trial—Criminal Procedure Code, s.* 260.

Offences under s. 2 of Act XIII of 1859 are triable summarily under s. 260 of the Criminal Procedure Code.

The offence made punishable by s. 2 of Act XIII of 1859 is the wilful and without lawful and reasonable excuse neglecting or refusing to perform the contract entered into by persons whom the Act concerns. Notwithstanding the preamble of the Act, it is not necessary to prove that a breach of contract is fraudulent in order to sustain a conviction under s. 2. *Taradoss Bhuttacharjee* v. *Bhaloo Sheikh* (1) dissented from.

Where the enacting sections of a statute are clear, the terms of the preamble cannot be called in aid to restrict their operation, or to cut them down.

THIS was an application for revision of an order of the Sessions Judge of Cawnpore, affirming an order of the Joint-Magistrate convicting and sentencing the petitioner for an offence punishable under s. 2 of Act XIII of 1859 ("an Act to provide for the punishment of breaches of contract of artificers, workmen, and labourers in certain cases"). The petitioner was a carding mistri, who, by an agreement in writing, dated the 22nd March, 1888, bound himself to serve the Elgin Mills Company at Cawnpore for three years excepting leave or "on some emergent occasion" of which he should

(1) 8 W. R. Cr. 69.