

## MISCELLANEOUS CIVIL.

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May 2.

*Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Blair and  
Mr. Justice Burkitt.*

DRIG BIJAI SINGH (PLAINTIFF) v. THE DEPUTY COMMISSIONER  
OF GONDA AND ANOTHER (DEFENDANTS).\*

*Act No. XVIII of 1876 (Oudh Laws Act), Chapter II—Pre-emption—  
“Member of the village community”—Under-proprietor—Right of  
under-proprietor to pre-empt a mahal sold by a proprietor.*

*Held* that under clause 3 of section 9 of the Oudh Laws Act, 1876, a person holding an under-proprietary interest in a mahal sold by the Court of Wards on behalf of the proprietor of the mahal, was entitled to pre-emption in respect of such mahal as against the vendor.

THIS was a reference made to the High Court by the Judicial Commissioner and the Additional Judicial Commissioner of Oudh under section 9 of Act No. XIV of 1891, as amended by Act No. XVI of 1897. The facts out of which the reference arose were as follows:—

On the 16th of June, 1898, the Deputy Commissioner of Gonda, as Manager of the Court of Wards, sold to one Ram Rup, together with other property, a certain mahal called patti Sabal Shah forming part of the village of Paharpur. The property sold was a proprietary tenure. One Drig Bijai Singh, who was the owner of an under-proprietary tenure in the mahal which had been sold to Ram Rup, brought a suit for pre-emption of the mahal sold, basing his claim on the provisions of sections 7 and 9 of Act No. XVIII of 1876, the Oudh Laws Act.

The Court of first instance (Subordinate Judge) dismissed the plaintiff's suit. The plaintiff appealed to the Court of the District Judge, who confirmed the order of the Subordinate Judge. The plaintiff appealed against the order of the District Judge to the Court of the Judicial Commissioner of Oudh, and the appeal came on for hearing before a Bench consisting of the Judicial Commissioner and the Additional Judicial Commissioner, who, disagreeing as to the correct interpretation of the Act in question, referred to the High Court the question whether or not the plaintiff was entitled to pre-emption.

Babu Man Mohan Sanyal (for whom Mr. Ishaq Khan), for the appellant.

Mr. A. E. Ryves, for the Court of Wards.

Pandit *Moti Lal Nehru* (for whom Pandit *Tej Bahadur Sapru*), for respondent No. 2.

STANLEY, C.J.—This matter comes before the Court upon a reference under section 9 of the Oudh Courts Act (XIV of 1891) as amended by Act No. XVI of 1897.

The suit was brought to enforce a right of pre-emption, the plaintiff claiming such right as being a person entitled to pre-empt under the provisions of the Oudh Laws Act, 1876 (Act No. XVIII of 1876).

The property to which the suit relates is a mahal called Patti Sabal Shah, and was sold by the Deputy Commissioner of Gonda, as manager on behalf of the Court of Wards, to the respondent, Rup Ram. The plaintiff holds an under-proprietary interest in a portion of the land in the mahal, and by virtue of such interest claimed a right of pre-emption under the provisions of the Act to which I have referred. The learned Judicial and Additional Judicial Commissioners differed in their views upon this question, and in consequence have referred to us the following question, *viz.*—“Whether the appellant (Drig Bijai Singh) in this case is a member of the village community, and as such has a right of pre-emption under clause 3, section 9 of Act No. XVIII of 1876. The Judicial Commissioner was of opinion that the appellant had a right of pre-emption, while the Additional Judicial Commissioner expressed a contrary view.

The language of the section in question is particularly obscure, and it is by no means easy to place an interpretation upon it with any degree of confidence. Chapter VI of the Oudh Laws Act, 1876, deals with pre-emption. In section 7 it is provided that in the absence of any custom or contract to the contrary the right of pre-emption shall be presumed—“(a) to exist in all village communities however constituted, and whether proprietary or under-proprietary.” Then the devolution of the right when property to be sold or foreclosed is a proprietary or under-proprietary tenure is dealt with in section 9, which runs as follows:—“If the property to be sold or foreclosed is a proprietary or under-proprietary tenure, or a share of such a tenure, the right to buy or redeem such property belongs in the absence of a custom

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to the contrary ;—1st, to co-sharers of the sub-division (if any) of the tenure in which the property is comprised, in order of their relationship to the vendor or mortgagor ; 2ndly, to co-sharers of the whole mahal in the same order ; 3rdly, to any member of the village community ; and, 4thly, if the property be an under-proprietary tenure, to the proprietor.” Then follows the provision that where two or more persons are equally entitled to such right the person to exercise the same shall be determined by lot. According to the 3rd sub-division of this section, whether the property sold or foreclosed is a proprietary or under-proprietary tenure, any member of the village community may exercise the right of pre-emption. The constitution of the village community is disclosed in section 7 by the description of village communities as village communities “however constituted, and whether proprietary or under-proprietary ;” that is, I take it, village communities consisting of proprietors or under-proprietors or partly of proprietors and partly of under-proprietors. The words “however constituted” are words of wide meaning and must not be lost sight of. Reading then the words “any member of the village community” in section 9 in connection with the definition or description of village communities contained in section 7, it appears to be reasonably clear that an under-proprietor is a member of the village community within the meaning of section 9. If this be so, then, according to section 9, whether the property to be sold or foreclosed is a proprietary or under-proprietary tenure, the right to buy or redeem belongs under the 3rd sub-division of this section to any member of the village community, that is, to any member whether he be a proprietor or an under-proprietor. According to the interpretation placed upon the section by the learned Additional Judicial Commissioner the words “any member of the village community” are to be construed according to circumstances as meaning, if the tenure sold is a proprietary tenure, a member of the village community who is a proprietor ; but if the tenure sold is an under-proprietary tenure, then as meaning a member of the village community who is an under-proprietor. This appears to me to be a somewhat fanciful exposition of the section. The words of the Act are quite general and without qualification, namely, that whether the property to

be sold or foreclosed is a proprietary or under-proprietary tenure any member of the village community, that is, any proprietor or under-proprietor shall have the right to pre-empt. If the Legislature had intended that only members of the village community who were proprietors should have the right of pre-empting a proprietary tenure, and that only members of the village community who were under-proprietors should have the right of pre-empting under-proprietary tenures, the section in question would, I think, have been differently expressed.

The provisions in the 4th sub-division of the section, namely, "if the property be an under-proprietary tenure, to the proprietor" throw no light one way or other upon the question so far as I can discover.

For the foregoing reasons I would answer the questions submitted to us in the affirmative.

BLAIR, J.—This case has been referred to this Court by the Judicial and Additional Judicial Commissioners of Oudh under the provisions of the Oudh Court's Act (XIV of 1891) as amended by Act No. XVI of 1897. The point upon which the learned Judicial Commissioners differed was whether the plaintiff appellant was entitled to a decree in a pre-emption suit brought by him against the Court of Wards as vendors of certain property belonging to the Ramnagar estate and one Ram Rup as the vendee. The facts are simple. On the 16th of June, 1898, the defendant, Court of Wards, sold to the defendant, Ram Rup, together with other property, a certain mahal called Patti Sabal Shah included in the village of Paharpur. The property sold is a proprietary tenure, and the learned Judicial Commissioners are agreed that the plaintiff is the owner of an under-proprietary tenure in the village of Paharpur, situate in the same mahal or sub-division of a tenure as the property sold.

The right of the plaintiff, if he possess any, depends upon the provisions of sections 7 and 9 of Act No. XVIII of 1876, called the Oudh Laws Act. Section 7 enacts that "unless the existence of any custom or contract to the contrary is proved, such right (*i.e.* of pre-emption) shall, whether recorded in the settlement record or not, be presumed (*a*) to exist in all village communities, however constituted and whether proprietary or

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under-proprietary, and in the cases referred to in section 40 of the Oudh Land Revenue Act, and (b) to extend to the village site, to houses built upon it, to all lands and shares of lands within the village boundary and to all transferable rights affecting such lands." Section 9 classifies the persons who are entitled to pre-empt in the following words:—"If the property to be sold or foreclosed is a proprietary or under-proprietary tenure or a share of such tenure, the right to buy or redeem such property belongs, in the absence of a custom to the contrary, 1st, to co-sharers of the sub-division (if any) of the tenure in which the property is comprised in order of their relationship to the vendee or mortgagor; 2ndly, to co-sharers of the whole mahal in the same order; 3rdly, to any member of the village community; and 4thly, if the property be an under-proprietary tenure, to the proprietor." It is then provided that the claims of those of equal right shall be determined by lot.

It is manifest that as the property sold is an entire mahal, there are no co-sharers entitled to pre-empt under the first two classes set out in section 9. The plaintiff, if entitled at all, acquires his right "as a member of the village community" under the 3rd class. We have to decide whether, within the true intent and meaning of the words, "any member of the village community," is included for purposes of pre-emption upon the sale of a proprietary tenure a co-sharer of under-proprietary tenure. *Prima facie* the words are inclusive of all co-sharers in the village, and unless restricted and modified by other provisions of the same or some other act *in pari materia* must be so read.

The learned Judicial Commissioners have agreed that, though the Act contains no explicit provision to that effect, villages including tenures of different kinds fall within the provisions of sections 7 and 9 of the Oudh Laws Act, 1876, and that question is therefore not referred to us. The village of Paharpur is such a composite village, the vendor holding a proprietary tenure, the person claiming to pre-empt an under-proprietary tenure. Apart altogether from the fact that what was sold was an entire mahal, the present plaintiff could in no case have been included in class 1 as a co-sharer of a tenure in which the property sold

was comprised ; as to class 2, there are no co-sharers of the mahal sold. But a consideration of the definitions of those two classes appears to me to throw light upon the meaning of the words "any member of the village community" in class 3. The qualification required by class 1 is an interest in a "sub-division of the tenure" of the property sold, and among persons possessing such an interest the nearer relation has the prior claim. When we come to Class 2 we find that the interest in the "sub-division of the tenure" is dropped out, and the words defining the qualification are simply "co-sharers of the whole mahal." Persons possessing such qualification are entitled in the order of relationship as in the previous class. It would appear therefore that even in class 2 there is to be found no restriction of pre-emptive right arising from diversity of tenure.

Whether the words "member of the village community" are to be construed as equivalent to the words—"co-sharer in class 2," subject only to the difference of the area in which the qualifying interest lies, it seems obvious that they can bear no narrower meaning. They seem large enough to cover possession of any or all of the various interests specified in section 7 of the Oudh Laws Act, and to confer on the body of persons entitled to pre-emption under class 3 a right in no way restricted by the diversity of the tenure sold from that which constitutes their interest in the village.

I have had considerable difficulty in putting upon the provisions of class 4 an interpretation consistent with what I hold to be the true intent and meaning of the definition in class 3. It seems to me, however, to refer to those cases which are plainly contemplated by the Act in which the constitution of the village does not include proprietors. I am therefore of opinion that the plaintiff is a "member of the village community" of Paharpur and as such entitled to pre-empt the property sold. That is my reply to this reference.

**BURKITT, J.**—This matter has been referred to this Court in consequence of a difference of opinion between the learned Judicial Commissioner and Additional Judicial Commissioner of Oudh.

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The question referred to us for an expression of our opinion is "whether the appellant in this case is a member of the village community, and as such has a right of pre-emption under clause 3, section 9 of Act No. XVIII of 1876." It is unnecessary for me to recapitulate the facts of the case. They will be found fully detailed in the judgments of the learned Chief Justice and my brother Blair. Suffice it to say that an entire mahal, the property of the Ramnagar estate, was sold by the Court of Wards on behalf of the proprietor of that estate to one Rup Ram. The plaintiff-appellant claims to be entitled to pre-empt that sale. It is found that the plaintiff is an under-proprietor in the mahal. The question for decision then is—does that status constitute him a "member of the village community" under the 3rd clause of section 9 of the Act and give him a right to pre-empt the sale made to Rup Ram?

The views which have commended themselves to the Additional Judicial Commissioner are very attractive and symmetrical. He holds that in the case of the sale of a proprietary tenure the words "member of the village community" mean a member of that community who possesses proprietary rights, and in the case of a sale of an under-proprietary tenure mean a member possessed of under-proprietary rights. He therefore holds that as the plaintiff here is an under-proprietor, and as that which is the subject of the suit is a proprietary tenure, the plaintiff is not a member of the village community, and is therefore not entitled to pre-empt the sale of that tenure. In support of his views the learned Additional Judicial Commissioner has set forth several arguments which I have most carefully weighed and considered. But it seems to me that before I could agree with the learned Additional Judicial Commissioner it would be necessary to read into clause 3 of section 9 of the Act many words which the Legislature has not thought fit to insert in it. The chapter on pre-emption is no doubt somewhat obscure, but still I think a reasonable interpretation can be put on it as it stands without resorting to any interpolations.

Now section 6 of the Act defines the right of pre-emption to be a right of certain persons "to acquire, in the cases hereinafter specified, immovable property in preference to all other

persons." These last few words are very important as indicating the scope and intention of the chapter. Then section 7 declares that such right (*i.e.* a right to acquire, in the cases hereinafter specified, immovable property in preference to all other persons) shall be presumed to exist in "all village communities, however constituted and whether proprietary or under-proprietary." The words "village community" are not anywhere defined in the Act, but the accepted rule in the Oudh Courts is that they include all persons having an interest in the village estate, whether as proprietors or as under-proprietors, if resident in the village. A village community may be wholly proprietary or wholly under-proprietary or may contain members of both classes. The under-proprietors, as a rule, will be residents of the village, but the proprietors may be residents of another district or of another province, and their only connection with the village may be the receipt of revenue from the under-proprietors. It is difficult to conceive of larger and more unqualified words than those which in section 7, clause (a) describe the persons who are to be presumed to possess the rights defined in section 6, namely, the words "all village communities, however constituted, and whether proprietary or under-proprietary."

I interpret those words to mean that the right defined in section 6 must be presumed to belong to every member of the village community, whether that community consists of proprietors or of under-proprietors or partly of both. It follows, therefore, in this case that the appellant being an under-proprietor is a member of the village community.

There remains the second part of the question put to us, namely, has the appellant "as such" (that is as a member of the village community) a "right of pre-emption under clause 3, section 9 of Act XVIII of 1876?" If the interpretation I have put on section 7 be correct, I am of opinion that in the present case under the 3rd clause of section 9 the plaintiff-appellant here is entitled to pre-empt. According to the interpretation for which the respondent vendee contends, the 3rd clause of section 9 must be read somewhat in this way, namely, "3rd, to any member of the village community who is a proprietor in the case of the sale or foreclosure of a proprietary tenure, and to

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any member who is an under-proprietor in the case of the sale or foreclosure of an under-proprietary tenure." I am not prepared to cut down the very large words used in section 7 by putting on them the restricted meaning suggested above, and to hold that, though the Legislature has given pre-emptive rights to "any member of the village community," a certain class of such members shall be competent to exercise those rights, not generally and in all cases, but only when a certain class of property is sold or foreclosed. To put such a meaning on clause 3 would, in my opinion, be an act of legislation, and not an interpretation of the law as it stands. Further, such an interpretation would to my mind be at variance with the scope and intention of section 6 to which I have already referred. The respondent vendee is a stranger to the village community, while the appellant is a resident under-proprietor and a member of that community. That being so, I think the latter must be considered to be such member for all pre-emption purposes under the pre-emption chapter of the Act, and should not merely be considered to be such when the property, the subject of pre-emption, happens to be an under-proprietary tenure. The interpretation I would adopt has, in the present case, the advantage of securing to the appellant the right I think him entitled to "in preference to all others," and also that of keeping out one who admittedly is a stranger to the village community.

No argument can, I think, be based on the provisions of the 4th clause of section. 9. That clause was probably enacted with a view to giving to an absentee landlord a right of pre-emption which he otherwise would not have possessed. It is not necessary to discuss that matter further.

For the above reasons I have come to the conclusion that the question put to us should be answered in the affirmative.

BY THE COURT.—Our opinion is that the appellant in this case is a member of the village community and as such entitled to pre-empt the sale. Let this reply be forwarded to the Judicial Commissioner of Oudh.