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RAJA SETH
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DEBI
PRASAD.

for the respondents was bound to admit that this ground of appeal was well founded. In view of the decision in *Sheo Shankar v. Parma Mahton* (1) this ground of appeal could not be resisted. This bond which has been relied upon clearly is a clog upon redemption within the rule referred to in that case. The matter must not be overlooked when the case comes up for final orders. The objections filed under section 561 of the Code of Civil Procedure have been abandoned.

Cause remanded.

Before Mr. Justice Richards.

KALESHAR RAI (PLAINTIFF) v. NABIBAN BIBI (DEFENDANT).*

Pre-emption—Two successive purchases by same vendee—Claim to be co-sharer at date of suit on first purchase in virtue of second purchase.

Where in a suit for pre-emption it appeared that the vendee had, prior to the date of the suit, made a second purchase in regard to which no suit had been filed prior to the date of the institution of the suit in regard to the first purchase, but limitation had not expired in regard to the second purchase, *held* that the vendee could not be considered by virtue of his second purchase to have been a co-sharer at the date of the institution of the suit on the first purchase. *Bhagwan Das v. Mohan Lal* (2) distinguished.

In this case the defendant purchased a share in certain villages on the 11th of November, 1902. In respect of this purchase the plaintiff filed a suit for pre-emption on the 3rd of November, 1903. The defendants' main answer to the suit was that by a second purchase on the 30th of June, 1903, long before the institution of the present suit he had become a co-sharer, and therefore the suit would not lie. In respect, however, of this second purchase a second suit for pre-emption was filed against the defendant on the 11th of November, 1903. The Court of first instance (Munsif of Muhammadabad) dismissed the suit, holding that the ruling in *Bhagwan Das v. Mohan Lal* (2) applied to the case before him, and consequently that the plaintiff had no right of pre-emption. On appeal by the plaintiff, the lower appellate Court (District Judge of Ghazipur) for similar

* Second Appeal No. 768 of 1904, from a decree of L. Marshall, Esq., District Judge of Ghazipur, dated the 10th May, 1904, confirming a decree of Munshi Chandī Prasad, Munsif of Muhammadabad, dated the 5th February, 1904.

(1) (1904) I. L. R., 26 All., 559.

(2) (1903) I. L. R., 25 All., 421.

reasons dismissed the appeal and confirmed the decree of the Court of first instance. The plaintiff thereupon appealed to the High Court.

Munshi *Gobind Prasad*, for the appellant.

Mr. *Karamat Husain*, for the respondent.

RICHARDS, J.—This was a pre-emption suit. The right of pre-emption clearly exists. The defendant vendee was a stranger and made a purchase on the 11th of November, 1902. A pre-emption suit in respect of the subject-matter of the sale was instituted on the 3rd of November, 1903. In the meantime the defendant vendee had made a second purchase on the 30th of June, 1903. A second pre-emption suit in respect of the subject matter of the second sale was instituted on the 11th of November, 1903. It therefore appears that at the time of the institution of the first suit there was no suit to pre-empt the subject-matter of the second sale. The defendant vendee contends that by virtue the second purchase he was on the date of the institution of the first suit a co-sharer and not a stranger, and that therefore the suit to pre-empt the subject-matter of the sale, dated 11th November, 1902, must fail. In support of this contention he has cited *Bhagwan Das v. Mohan Lal* (1), in which it was held that where a stranger had purchased a share in the village which was subject to the right of pre-emption, and subsequently and before any suit was brought became a co-sharer by virtue of the second sale, a suit for pre-emption could not be maintained. It clearly appears from the judgment in the case that it was decided entirely on the ground that the vendee had admittedly become a co-sharer by virtue of his second purchase. A perusal of the record of the case shows that the vendee expressly pleaded that he had become a co-sharer by purchase and that no suit had been brought within the period of limitation in respect of the sale by virtue of which he claimed to be a co-sharer. The present suit is entirely different. A suit has been brought within limitation to pre-empt the subject-matter of the second sale. It seems to me, therefore, that the defendant vendee has never become a co-sharer, and that, when he made the second purchase, the latter, just as the first, was liable to be set aside in a suit for pre-emption by

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a co-sharer having right to pre-empt. I allow the appeal, set aside the judgments and decrees of both the lower Courts, and remand the case to the Court of first instance through the lower appellate Court, with directions to readmit the suit under its original number in the register and proceed to determine the suit on the merits. Costs will abide the event.

Appeal decreed and cause remanded.

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May 1.

Before Mr. Justice Richards.

RANI INDOMATI (DEFENDANT) v. JAGESHAR (PLAINTIFF) AND GAURI SHANKAR (DEFENDANT).*

Civil Procedure Code, sections 13, 244, 278, 283—Execution of decree—Legal representative of judgment-debtor alleging possession as trustee—Objection—Defence raised in separate suit.

Held that, though a legal representative of a judgment-debtor who alleges that the property sought to be sold in execution was not the property of the judgment-debtor, but was property possessed by the legal representative as trustee for others, may file an objection under section 278 of the Code of Civil Procedure, there is nothing to compel the filing of such an objection and it is open to the legal representative to raise the defence in a subsequent suit brought by the auction-purchaser for possession. *See Chand Mal v. Durga Dei (1) and Syed Ali Suijjad v. Bhajan Singh (2) referred to.*

THE following are the facts:—

The plaintiff, Jageshar, at an auction sale in execution of a decree obtained against one Raj Kumar purchased a grove together with other properties. The plaintiff failed to get possession of the grove and, Raj Kumar having died meanwhile, he brought a suit against his legal representative, Rani Indomati. Rani Indomati alleged that she had (prior to the plaintiff's purchase) purchased the grove with her own money and had by a registered deed dedicated it for certain religious purposes, she being herself manager and Gauri Shankar her *karinda*.

Gauri Shankar had filed an objection in regard to the grove in the execution proceedings, and his objection had been upheld.

* Second Appeal No. 696 of 1904, from a decree of Pandit Rai Indar Narain, Subordinate Judge of Farrukhabad, dated the 25th of April, 1904, confirming a decree of Baba Khirod Gopal Banorji, Munsif of Kanauj, dated the 30th of November, 1903.