

the whole *deh* was comprised. We find that Sardar Singh and Bhagwat Singh came within the terms of *hissadaran deh* as used in the *wajib-ul-arz* and they were on equal footing so far as the right of pre-emption is concerned with the plaintiffs. We therefore decree this appeal and set aside the decree of the lower Court. The suit of the plaintiff will stand dismissed with costs.

1906

SARDAR
SINGH
v.
IJAZ
HUSAIN
KHAN.

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

1906
April 12.

B. E. O'CONNOR (DEFENDANT) v. GHULAM HAIDAR (PLAINTIFF) AND
MUSAMMAT SUMATI AND OTHERS (DEFENDANTS).*

*Pre-emption—One total price for ten villages—Ten separate conveyances naming
a separate price for each village—Annual profits—Government revenue—
Amount to be paid on pre-emption.*

Where A agreed to buy from B ten villages for one total price, but by subsequent agreement between A and B ten separate conveyances were executed showing ten separate prices, *held* in a suit for pre-emption that if it was proved that the consideration mentioned in the sale-deed had been paid and received, the Court should not look further and ascertain the value of the property in suit by a consideration of the annual profits or of the amount of Government revenue.

THE following are the facts:—

Ten villages were purchased in execution by the decree-holder for Rs. 29,280. The decree-holder accepted an offer by the appellant to purchase the whole ten villages for Rs. 35,000. In accordance with an agreement subsequently arrived at between the parties to the sale, a separate conveyance was executed in respect of each village showing the consideration for each, that executed for the village now in suit showing the price as Rs. 5,500, and the vendor admitted at the registration receipt of this sum. She had purchased it for Rs. 4,000.

The present plaintiff, admittedly a person entitled to pre-empt, sought in this case to do so on payment of Rs. 1,996-2-3, fixing that sum on the basis of the profits of the village and alleging that Rs. 35,000 had been the price for the ten villages and that separate conveyances naming separate prices had been executed only to defeat rights of pre-emption.

* Second Appeal No. 1194 of 1904, from a decree of E. H. Ashworth, Esq., District Judge of Allahabad, dated the 6th of July, 1904, modifying a decree of Pandit Raj Nath Sahib, Subordinate Judge of Allahabad, dated the 31st of March, 1904.

1906

O'CONNOR
v.
GHULAM
HAIDAR.

The Court of first instance and the lower appellate Court held that the plaintiff could pre-empt for Rs. 3,350-12-8 and Rs. 2,025-13-6, respectively.

Sir *Walter Colvin*, Mr. *W. Wallach*, and Maulvi *Muhammad Ishaq*, for the appellant.

Babu *Durgu Charan Banerji*, Pandit *Moti Lal Nehru*, and Babu *Datti Lal*, for the respondents.

STANLEY, C.J. and BURKITT, J.—This second appeal arises out of a suit for pre-emption brought by the plaintiff, Ghulam Haidar, under the following circumstances:—One Ali Mazhar was the owner of considerable property consisting, amongst others, of ten villages in the district of Allahabad. He became embarrassed and at the suit of one of his creditors, Musammat Srimati Benodi Debi, decrees were passed, and in execution of these decrees the ten villages were sold on the 20th of March, 1902, and purchased by the decree-holder for various sums, amounting in the aggregate to Rs. 29,280. Musammat Benodi Debi had no intention of retaining the property, and allowed the information to be circulated that she was willing to dispose of the villages to purchasers at a reasonable profit on her purchase. The village of Chamarcha with which this appeal is concerned is one of the ten villages and was purchased by her for the sum of Rs. 4,000. Mr. O'Connor acting on behalf of one Husain Ali Khan, offered to purchase the ten villages for a sum of Rs. 35,000 and this offer was accepted, and the terms of purchase were afterwards arranged. Although Rs. 35,000 was the aggregate price of the entire ten villages, it was agreed that a separate conveyance should be executed in respect of each of the villages showing the consideration to be paid for each village. There is nothing, we may point out, to prevent a vendor and purchaser from modifying a contract entered into between them in any way they may please or indeed from rescinding a contract and entering into an entirely new contract. The parties here had an absolute right to arrange that the sale should be carried out by separate conveyances and to fix the price of each village at their pleasure. If the prices were fixed as far as possible to prevent pre-emption, we see no objection to this, provided the purchase-money as set forth in each conveyance was in each case actually paid. Accordingly ten

1906

O'CONNOR
v.
GHULAM
HAIDAR.

conveyances were prepared, executed and registered, and Rs. 35,000 were paid to the vendor through the Bank of Bengal. The purchase-money which was paid for the village of Chamarcha was Rs. 5,500. This is the price for which, as is recited in the deed, the property was purchased and the sum which the vendor admitted at registration she had received in respect of that village. The plaintiff, Ghulam Haidar, instituted the suit out of which this second appeal has arisen to pre-empt the sale of this village and is admitted to be a person entitled to pre-empt.

In his plaint he alleged that the ten villages were purchased by Mr. O'Connor for a sum of Rs. 35,000, but that in order to defeat the right of pre-emption of the plaintiff and other co-sharers of the villages separate sale-deeds were executed in respect of each village and that the sale consideration stated in the sale-deed of the village Chamarcha is Rs. 5,500. He claimed a right to pre-empt this village on payment of a sum of Rs. 1,996-2-3, a sum arbitrarily fixed by him with reference to the profits of the village, expressing his belief that the actual sale consideration of the property did not exceed that amount. He asked for a decree for pre-emption on payment of that sum, or any other sum which the Court might fix.

The Court of first instance held that the plaintiff was entitled to pre-empt on payment of a sum of Rs. 3,350-12-8.

On appeal by Mr. O'Connor, the learned District Judge dismissed the appeal, but allowed an objection filed on behalf of the respondent, Ghulam Haidar, and varied the decree by reducing the amount payable by him for pre-emption to the sum of Rs. 2,025-13-6. This, it will be observed, is about half the price which was paid by Musammat Benodi Debi on the occasion of her purchase. The learned District Judge held that if it were necessary he should hold "that the lower Court was justified in finding from a Civil Court point of view that the amounts entered in the sale-deeds were fraudulent." By this he means that the defendant, appellant here, entered in the sale-deeds of some of the villages higher prices than he otherwise would have done in order to defeat claims for pre-emption. Thereupon, ignoring the contracts evidenced by the sale-deeds, he went into the question of the market value of the properties comprised therein, and therefrom made

1908

O'CONNOR
v.
GHULAM
HAIDAR.

new contracts for the parties, finding that the market values so arrived at formed the price which the parties agreed to pay and to accept. In this we think the learned Judge was wholly wrong. There is not merely no allegation of fraud in the plaint, but there is not a tittle of evidence to support the finding of the District Judge that the amounts entered in the sale-deeds were fraudulent. What the learned Judge means by the statement that the sale-deeds were "fraudulent from a Civil Court point of view" we are at a loss to understand, but we observe that he subsequently states that the finding of fraud by a Civil Court "does not amount to saying that any criminal or even moral dishonesty is proved against the appellant." There is no evidence to support the case which the learned District Judge has set up for the plaintiff respondent, Ghulam Haidar. Each individual sale-deed contains an admission by the vendor that the amount of consideration entered in that deed had been paid to and received by her. To the same effect is the registration endorsement. There is absolutely nothing on the record to show that these admissions were fraudulent or untrue. The sale-deed of village Chamarcha embodies the ultimate agreement come to by the parties, and shows the receipt of consideration and is the evidence by which the rights of the parties ought to be determined. The evidence afforded by it has not been rebutted by any other evidence. There is, no doubt, on the record some evidence as to what would be the market value of this particular village if that value were to be ascertained by a consideration of the annual profits or of the amount of the Government revenue; but as long as we have before us the concluded agreement of the parties and the admission not rebutted by other evidence, that the consideration mentioned in the sale-deed had been paid and received, there is no reason why we should look further and ascertain what the value of the property is in the manner adopted by the lower Courts. It should be borne in mind as an elementary fact in pre-emption law that if a vendee is willing to pay even a fancy price, many times its value for certain property and does pay it, the pre-emptor who wants to take over that property can do so only on payment of that fancy price. The plaintiff admittedly is entitled to pre-empt the sale, but he can do so only on payment of the actual

price fixed between the parties and paid. It is admitted that the plaintiff respondent, Ghulam Haidar, had an opportunity of pre-empting the property on payment of the price given for it by Mr. O'Connor, that is, Rs. 5,500. This offer he declined on the 27th of August, 1902. The litigation is altogether due to his action. We therefore allow the appeal; modify the decree of the two lower Courts, and give the plaintiff respondent a decree for possession on payment, on or before the 12th of July, 1906, of the sum of Rs. 5,500 with interest at the rate of 6 per cent. per annum from the 27th of August, 1902, up to the date of payment. If the plaintiff pays this amount within the time prescribed, he will obtain possession of the pre-emptive property in suit, but on failure to make this payment his suit will stand dismissed with costs in all Courts. In any event the respondent, Ghulam Haidar, must pay the costs of the defendant appellant in both the lower Courts and also the costs of this appeal.

1906

 O'CONNOR
 v.
 GHULAM
 HAIDAR.

Decree modified.

REVISIONAL CIVIL.

 1906
 April 18.

Before Mr. Justice Aikman.

GANESH SINGH (APPLICANT) v. KASHI SINGH AND OTHERS

(OPPOSITE PARTIES).*

Civil Procedure Code, section 525—Arbitration—Validity of reference disputed—Jurisdiction of Court to decide as to validity of reference—Civil Procedure Code, section 622.

Held, that upon an application made to it under section 525 of the Code of Civil Procedure, the Court has jurisdiction to and is bound to inquire into the question whether the parties had or had not referred the matter in question to arbitration.

Amrit Ram v. Dasrat Ram (1), *Mahomed Wahid-ud-din v. Hakimian* (2) and *Manilal Hargovandas v. Venmalidas Amrat Lal* (3) referred to.

THE applicant for revision had filed an application in the Court of the Munsif of Rasra praying for a decree in accordance with the terms of an award arrived at without the intervention of the Court. The opposite party disputed the validity of the award on several grounds. The lower Court, relying on the decisions in *Samal Nathu v. Jai Shankar Dalsukram* (4) and *Hurronath Chowdhry v. Nistarini Choudhрани* (5), refused to

* Civil Revision No. 55 of 1905.

- (1) (1894) I. L. R., 17 All., 21. (3) (1905) I. L. R., 29 Bom., 621.
 (2) (1898) I. L. R., 25 Cal., 757. (4) (1884) I. L. R., 10 Bom., 254.
 (5) (1889) I. L. R., 10 Cal., 74.