

merely an incidental relief to the claim for specific performance of the contract.

We dismiss the appeal with costs.

*Appeal dismissed.*

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NITYA NAND  
v.  
BISHAN LAL.

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May, 9.

*Before the Hon'ble Mr. H. G. Richards, Chief Justice, and Mr. Justice Banerji.*

SRI KISHAN SINGH (PLAINTIFF) v. BACHCHA PANDE AND OTHERS  
(DEFENDANTS).\*

*Pre-emption—Wajib-ul-arz—Notice of sale given to member of a joint Hindu family—Effect of such notice—Effect of conditional reply disputing amount of alleged consideration.*

*Held* that a person having a right of pre-emption does not lose it by refusing to purchase the property at the price at which it is offered to him, because he believes that such price is in excess of the real price, where such belief is entertained and expressed in good faith.

Where the pre-emptor and his brothers were members of a joint Hindu family and the vendor addressed a notice to him and his brothers jointly, to which the pre-emptor's brother sent a reply; *held* that the plaintiff pre-emptor was entitled to claim the benefit of this reply as if it had been sent by himself.

*Lajja Prasad v. Devi Prasad* (1), *Amir Chand v. Ishar Das* (2), *Bholi Bibi v. Fahima Bibi* (3) and *Karim Baksh v. Khuda Baksh* (4) followed.

THE plaintiff was lambardar of a village, and according to the *wajib-ul-arz* was entitled to pre-empt. On the 2nd of March, 1909, the vendors sent a notice addressed to the plaintiff and his brother, members of a joint family, that he was going to sell the property to the vendees for Rs. 1,500. The notice was delivered on the 15th of March, 1909. It gave a week's time within which the plaintiff was to comply with its condition. The plaintiff was, at the time the notice was delivered, away from home, and on the 22nd his brother replied to the notice offering Rs. 800 for the property, which he said was its real value. The property was sold to the vendees, on the 29th of March, 1909. The plaintiff then filed the present suit for pre-emption. The court of first instance held that there was no waiver of the right of pre-emption by the plaintiff and further found that Rs. 911-1-9 was the real price

\* Second Appeal No. 1125 of 1910 from a decree of G. A. Faterson, District Judge of Benares, dated the 10th of September, 1910, reversing a decree of Murari Lal, Munsif of Benares, dated the 11th of July, 1910.

(1) (1880) I. L. R., 3 All., 236.

(2) Weekly Notes, 1882, p. 46.

(3) Weekly Notes, 1882, p. 186.

(4) (1894) I. L. R., 16 All., 247.

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paid. It decreed the suit conditional upon the payment of Rs. 911-1-9. The lower appellate court found that the price paid was Rs. 1,500. It held that the plaintiff must be deemed to have waived his right, inasmuch as he did not reply to the notice sent by the vendors, for, the plaintiff alone being entitled to pre-empt, the reply sent by his brother could not avail him. It relied on *Bhairon Singh v. Lalman* (1) and *Muhammad Wilayat Ali Khan v. Abdul Rab* (2). The suit was accordingly dismissed.

The plaintiff appealed to the High Court.

Babu *Sarat Chandra Chaudhri* (for *Munshi Gokul Prasad*), for the appellant, contended that the rulings relied upon by the appellate court did not apply, because in those cases no steps were taken by the pre-emptor to comply with the notice addressed to him. In the present case one notice had been sent to the plaintiff and the brothers of the plaintiff, who formed a joint Hindu family, and the reply having been sent by the brother of the plaintiff, the latter was entitled to rely upon it. Further, at the time the notice was delivered, the plaintiff was not at home, and there was no finding by the appellate court as to when he returned, so that probably if he had sent a reply the seven days' margin would have been long past. Consequently the question reduced itself to this, viz., whether the plaintiff should be deemed to have lost his right, because there was a difference as to the price as between himself and the vendor. If the difference was due to a *bona fide* belief in the mind of the plaintiff that the price at which he offered to purchase was the actual price and the vendor and the vendee were simply putting forward an inflated price, the plaintiff could not be held to have waived his right; *Lajju Prasad v. Debi Prasad* (3) *Amir Chand v. Ishar Das* (4) *Karim Bakhsh v. Khuda Bakhsh* (5).

The real issue, as held in *Amir Chand's* case, was whether the plaintiff *bona fide* believed that the actual price was Rs. 800. In the present case the property a few years back had been purchased by the vendor himself for Rs. 800: the plaintiff when

(1) (1884) I. L. R., 7 All., 23.

(3) (1880) I. L. R., 3 All., 236.

(2) (1898) I. L. R., 11 All., 108.

(4) *Weekly Notes*, 1892, p. 46.

(5) (1894) I. L. R., 16 All., 247.

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asked by the vendor to purchase had offered Rs. 800 : the reply sent by the plaintiff's brother distinctly stated that Rs. 800 was the real price and that the price demanded by the vendor (Rs. 1,500) was fictitious and incorrect, and finally the first court held that Rs. 911-1-9 was the real price paid. In his plaint the plaintiff said that Rs. 800 was the real price, but offered to pay such price as the court might determine. It was submitted that these facts went to show that the plaintiff entertained the belief *bond fide*.

Dr. *Tej Bahadur Sapru*, for the respondents, submitted that the rulings relied upon for the appellant did not apply. In the present case the plaintiff seemed to have fixed his own price. It was not stated in the reply to the notice that he believed the real price to be Rs. 800. The plaintiff did not offer to pay such price as the court might fix. The plaintiff was *lambardar*, and according to the *wajib-ul-arz* the right to pre-empt was personal to him, and in fact he did not join his brothers along with him in the suit. The plaintiff, however, was extremely negligent, and he could not avail himself of the reply his brother had sent. The plaintiff in any event should be made to pay the costs of the defendant in all courts, because the true price had been found to be Rs. 1,500.

Babu *Sarat Chandra Chaudhri* was not called upon to reply.

RICHARDS, C. J., and BANERJI, J.—This appeal arises out of a suit for pre-emption which has been dismissed by the lower appellate court on the ground that the plaintiff must be deemed to have refused to purchase the property when it was offered to him before the sale to the defendants vendees and thus waived his right of pre-emption. The property was sold to the defendants vendees for a consideration of Rs. 1,500. The plaintiff alleged in his plaint that this amount was not the actual amount of consideration paid, but that the real consideration was Rs. 800. The court of first instance was of opinion that the real consideration was Rs. 911-1-9. The lower appellate court, however, found that the actual consideration was Rs. 1,500. It appears that before the sale, namely, on the 2nd of March, 1909, the vendor

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sent a notice addressed to the plaintiff and other members of his family in which he stated that he was about to sell the property to the vendees for Rs. 1,500, and he asked the plaintiff and his co-sharers to purchase the property for that price. The notice was actually delivered on the 15th of March, 1909. The time allowed for sending a reply was one week. On the 22nd of March, 1909, the plaintiff's brother sent a reply, in which he said that he and his co-sharers were willing to purchase the property for Rs. 800, which he said was the real price of the property. The plaintiff himself sent no reply, and for this reason the learned Judge was of opinion that, as the plaintiff himself paid no attention to the notice sent by the vendor, he was not entitled to rely on the reply which was sent by his brother. We do not agree with the learned Judge on this point. It is true that the plaintiff as lambardar had the right of pre-emption, but he was a member of a joint Hindu family, and the vendor issued his notice to all the members of the joint family. The reasonable view to take in respect of the reply is that it was sent on behalf of all the persons to whom the original notice was addressed and as an answer to that notice. Therefore it must be taken to be an answer, not only on behalf of the plaintiff's brother, but also on behalf of the plaintiff himself. The effect of this answer was that the plaintiff was willing to purchase the property for what was the real consideration for the sale. The plaintiff and his co-sharers did not believe that Rs. 1,500 was the real consideration and therefore they refused to purchase for a price which they honestly believed to be considerably in excess of the real price. The fact that the court of first instance found the real price to be far below the amount mentioned in the sale-deed and the notice is a circumstance which suggests that the plaintiff was justified in believing that the property was not being sold for the price mentioned. The plaintiff swore that the property had been purchased by the vendor for Rs. 800 only a few years before the date of the sale in question. So that it may be reasonably inferred that in refusing to purchase for the price mentioned, the plaintiff was under the *bond fide* belief that the refusal to purchase was due to the belief that the price of the property had been greatly inflated. That being so, this case comes within the

purview of the ruling of this Court in *Lajja Prasad v. Debi Prasad* (1). In that case it was held that a person having a right of pre-emption does not lose it by refusing to purchase the property at the price at which it was offered to him, because he believes that such price is in excess of the real price, where the belief is entertained and expressed in good faith. This case was followed in *Amir Chand v. Ishar Das* (2); *Bholi Bibi v. Fahima Bibi* (3) and in *Karim Bakhsh v. Khuda Bakhsh* (4). In accordance with these rulings we must hold that the plaintiff has not forfeited his right of pre-emption. Having regard, however, to the fact that he made untrue allegations in his plaint and deposition and also to the fact that the actual price has been found by the lower appellate court to be Rs. 1,500, we are of opinion that he must bear the costs of the litigation.

We accordingly allow the appeal and decree the plaintiff's claim for pre-emption conditional upon his paying Rs. 1,500 within two months from this date. In any event the plaintiff must pay the costs of the respondents in all courts. If the plaintiff fails to pay the purchase money and the costs within the time fixed, the suit will stand dismissed.

*Appeal decreed.*

*Before Mr. Justice Sir George Knox and Mr. Justice Piggott.*

GHISU MAL AND OTHERS (PETITIONERS) v. THE OFFICIAL LIQUIDATOR, SHRI BALDEO MILLS COMPANY, LIMITED, AND OTHERS (OPPOSITE PARTIES).\*

*Act No. VI of 1882 (Indian Companies Act), section 169—Company—Winding up—Appeal—Notice of appeal—Limitation.*

On the 3rd of December, 1910, the District Judge of Aligarh made an order for the winding up under the supervision of the court of a company called the Shri Baldeo Mills Company, Limited. On the 7th of February, 1911, an application by some of the shareholders to reconsider the winding up order was dismissed. On the 25th of February, 1911, the applicants appealed to the High Court ostensibly against the order of the 7th of February, 1911, but in effect against the winding up order of the 3rd of December, 1910. No notice of this appeal was served on the respondents until at the earliest the 25th of March, 1911.

\* First Appeal No. 23 of 1911 from an order of A. Sabonadiere, District Judge of Aligarh, dated the 7th of February, 1911.

(1) (1880) I. L. R., 3 All., 235.  
(2) Weekly Notes, 1882, p. 46.

(3) Weekly Notes, 1882, p. 136.  
(4) (1882) I. L. R., 16 All., 247.

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