

1911

CHANDHAN  
v.  
BISHAN  
SINGH.

Eleven bighas and 11 biswas are for all practical purposes two-thirds of 17 bighas and 6 biswas. But the lady did not sell a fractional two-thirds share in the whole estate; if she had done so, her transferee would have been the owner of a two-thirds share in each and every plot, and liable to pay two-thirds of the revenue. But as matters stand, it is not possible to say what is the actual revenue on the specified plots now sold. It is impossible to calculate the court fee on five times the Government revenue and therefore the court fee must be calculated under section 7, clause 5 (d). The land is part of an estate paying revenue, but is not a definite fractional share of such an estate. The court fee is therefore payable on the market-value.

I allow one month's time to make good the deficiency.

## APPELLATE CIVIL.

1911

May, 9.

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

NITYA NAND AND OTHERS (DEFENDANTS) v. BISHAN LAL (PLAINTIFF)

AND MOHAN LAL AND ANOTHER (DEFENDANTS).\*

*Appeal—Jurisdiction—Valuation—Suit for specific performance of contract to sell—Additional relief claimed by way of cancellation of sale-deed subsequently executed.*

Where a suit was primarily a suit for specific performance of a contract to sell certain property to the plaintiffs, but also asked for the cancellation of a subsequent sale-deed of the property in favour of certain defendants, it was held that the latter relief was merely incidental to the former and its valuation would not affect the jurisdiction of the appellate court. *Pirithi Singh v. Maru Singh* (1) distinguished.

THE facts of this case were as follows:—

A certain house in Bulandshahr was the property of two brothers, members of a joint Hindu family. The plaintiff respondent entered into a contract with them for the purchase of the house. The contract was made on the 17th of May, 1906, but was not reduced to writing. The plaintiff came to know that the defendants 1 and 2, the owners of the house, were about to sell the house to defendants 3, 4, 5 and he, on the 27th of July, 1906,

\* Second Appeal No. 431 of 1910 from a decree of H. M. Smith, Additional Judge of Aligarh, dated the 16th of April, 1910, reversing a Shafi Subordinate Judge of Aligarh, dated the 15th of June, 1908.

served the vendors and the vendees with a notice of his right to enforce the contract. The defendants, first party, had accepted Rs. 500 by way of earnest-money from defendants, second party, on the 5th of July, 1906, and they executed a sale-deed in their favour on the 3rd of September, 1906. The deed was registered on 5th September, 1906. The plaintiff then sued for specific performance of the contract in his favour. The defendants pleaded want of a binding contract, and absence of notice till after the acceptance of earnest-money. They further said that the plaintiff had been acting as agent for another and could not sue himself. In addition to the enforcement of the contract, the plaintiff also prayed for cancellation of the sale-deed in favour of defendants, second party, wherein the price of the house was mentioned to be above Rs. 5,000. The first court found that the contract for the sale of the house was entered into by one of the brothers, but that it was subject to the approval of the other brother, and further that plaintiff had been acting as agent for a third party and dismissed the suit. The District Judge found that there was a complete contract between the parties and that the brother making it was competent to act alone and decreed the suit. The defendants purchasers appealed.

Babu *Jogindro Nath Chaudhri*, (Mr. *B. E. O'Connor* and Dr. *Tej Bahadur Sapru* with him), for the appellants :—

An appeal did not lie to the District Judge, as the valuation of the deed sought to be cancelled was over Rs. 8,000. He had no jurisdiction to hear the appeal; *Pirithi Singh v. Maru Singh* (1). Both reliefs were necessary for the plaintiff. In questions of court fee all that was to be seen was the relief asked for. Besides, according to section 27 of the Specific Relief Act, notice had to be given before payment of earnest-money by the third party.

The Hon'ble Pandit *Sundar Lal*, Babu *Durga Charan Banerji* and Babu *Girdhari Lal Agarwalu*, for respondents, were not called upon.

**RICHARDS, C. J., and BANERJI, J.** :—This appeal arises out of a suit for specific performance of a contract for the sale of a house. The defendants appellants are subsequent purchasers of the house

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which, upon the finding of the court below, was agreed to be sold by the owners of the house to the plaintiff. A number of defences were pleaded. First, that the sale to the plaintiff was negotiated by one of two brothers who had not the authority of the other brother. Secondly, that the plaintiff represented that he was purchasing, not for himself, but for a third party. Thirdly, that the appellants were transferees for value, in good faith, without notice of the previous contract with the defendants.

In our opinion all these defences are concluded by the findings of the court below. In our opinion, in coming to the conclusion which the lower appellate court came to, no mistake in law was made.

There was one other matter argued in the appeal, namely, that the claim being one to set aside a sale, the consideration for which was above Rs. 5,000, the appeal did not lie to the District Judge and the decree was *ultra vires*.

The plaintiff, no doubt, set forth in clause (b) of the prayer in the plaint a claim that the deed of transfer in favour of the appellants may be declared null and void as against the plaintiff. In our opinion the plaint and the prayer ought to be and can be read as a claim for specific performance against the owner of the house and subsequent purchasers who had bought with notice of the contract together with such incidental and proper relief as the court ought to give in a suit of this nature.

The learned advocate for the appellants cited the case of *Pirithi Singh v. Maru Singh* (1). In that case the plaintiff brought a suit for sale on foot of a mortgage. He also made parties to the suit a number of other persons who had held prior incumbrances against the property, and he claimed that it might be declared that these prior incumbrances had been paid off and discharged. In our opinion it is only necessary to state the nature of that suit to show that it was quite different from the present suit. The present suit is neither more nor less than a suit for specific performance of a contract against the original vendor and subsequent vendees with notice. The prayer which the appellants contended was an independent cause of action is

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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*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.