

We, therefore, allow the appeal, and, setting aside the decree of the District Judge with costs, restore that of the Munsif.

Appeal allowed.

1913

ACHHAIYAN
SINGH
v.
RAM SARUP
SARU.

1913
April, 22.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.

KHETTAR GHANDRA BASU MALLIK (DEFENDANT) v. NABIN KALI DEVI
(PLAINTIFF) AND GOSHAIN RAMPURI (DEFENDANT).*

Pre-emption—Subject matter of suit re-sold at advanced price—Second sale subject to right of pre-emption in respect of the first.

A house in the city of Benares subject to a customary right of pre-emption was sold for Rs. 1,150. The vendee resold it shortly afterwards to the defendant for Rs. 4,000. Held on suit brought to pre-empt the property at the original price of Rs. 1,150, that the second sale was subject to the right of pre-emption and the pre-emptor was only bound to pre-empt the first sale, making the subsequent vendee a party to the suit so as to bind him by the proceedings. *Kamta Prasad v. Mohan Bhagat* (1) referred to.

THIS was a suit for possession by right of pre-emption of a house in the city of Benares. The sale sought to be pre-empted was for Rs. 1,150. The purchaser (defendant No. 2) sold the same property subsequently for Rs. 4,000 to defendant No. 3. The plaintiff offered to pay only Rs. 1,150. The court of first instance decreed the claim. On appeal the District Judge confirmed the decree. The defendant appealed.

Munshi *Purshottam Das Tandan*, for the appellant.

Babu *Sital Prasad Ghosh*, for the respondents.

RICHARDS, C. J. and TUDBALL J.—This appeal arises out of a suit for pre-emption. The premises are situate in the city of Benares. A number of issues were framed in the court below; amongst others, one as to whether the custom prevailed in the particular muhalla where the premises were situate. Another issue was whether the demands were made in accordance with the Muhammadan Law. On the first question, it has not been shown to us that the decision of the court below was wrong. There was undoubtedly evidence of the existence of the custom and in conjunction with that evidence the court was clearly entitled to take into consideration that pre-emption is common in a number of the

* Second Appeal No. 856 of 1912, from a decree of G. A. Paterson, District Judge of Benares, dated the 29th of March, 1912, confirming a decree of Shrish Chandra Basu, Subordinate Judge of Benares, dated the 18th of July, 1911.

(1) (1909) I. L. R., 32 All., 45.

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muhallas into which the city Benares is divided. On the whole, we see no reason to differ from the view of both the courts below on this point.

With regard to the making of the demands, this is really a question of fact in the present case. It is not alleged that the demands were made in any improper form, or that the words used were not sufficient. The only question which has been urged here is whether or not the plaintiff made the demand immediately after hearing of the sale. This is a pure question of fact and is concluded by the finding of the courts below.

The last question which has been argued in the present appeal is the question of price. It appears that the property was first sold in September, 1908. At that time registration had to be obtained compulsorily and the court below found that the vendee did not obtain actual possession until a period which rendered the present suit not barred by limitation. But it appears that after the last vendee had obtained possession and cut down a *peepul* tree, the property was resold to the present appellant at about four times the original price. The court of first instance threw some doubt upon the *bond fides* of this sale, but the lower appellate court considered this question immaterial and dealt with the case upon the assumption that the sale was *bond fide*. In our opinion, the second sale must be taken to have been made subject to the right of pre-emption and the plaintiff was only bound to pre-empt the first sale, making, of course, the subsequent vendee a party to the suit so as to bind him by the proceedings. This was the view taken by a Bench of this Court in *Kamta Prasad v. Mohan Bhagat* (1).

The result is that the appeal fails on all points and is dismissed with costs.

Appeal dismissed.

(1) (1909) I. L. R., 32 All., 45.