

1914

DWARKA
v.
RAM PAT.

Court, and we have not the least doubt that when the case goes back to the court below it will act accordingly.

The next point argued was that amongst the items of property is an occupancy holding and that under section 32 of the Tenancy Act no suit can be brought for the division of an occupancy holding. This matter is in our opinion also covered by the judgement of the learned Judge of this Court. There can be no doubt that a suit for partition of property can be brought, even if the family property includes an occupancy holding. It does not at all follow that the court must necessarily sub-divide the holding in contravention of the provisions of the Tenancy Act. The Court can either give the occupancy holding to one party, taking from that party an equivalent in value, or if it be found impossible to do this, the Court can leave the occupancy holding undivided merely making a declaration that the parties are entitled jointly to the holding. In our opinion there is no force whatever in the appeal. It is accordingly dismissed with costs.

Appeal dismissed.

1914

May, 8.

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

RAM SARUP SAHU (DEFENDANT) v. KARAM-ULLAH KHAN AND
ANOTHER (PLAINTIFFS) *

*Pre-emption—Dispute as to true sale consideration—Evidence—Burden of proof—
Payment before Sub-Registrar.*

In a suit for pre-emption where it is alleged that the sale price is fictitious and put into the deed for the purpose of defeating pre-emption, it is open to the pre-emptor to give evidence to show that the market price is far below that stated in the sale-deed. If he gives such evidence to the satisfaction of the Court, the latter is quite justified in arriving at its own conclusion as to what was the real consideration, and this notwithstanding that it is proved that the amount stated in the deed was paid before the Sub-Registrar. *Adul Majid v. Amolat* (1) referred to. *O'Connor v. Ghulam Haidar* (2) not followed.

THIS was a suit for pre-emption, and the only material question in the case was as to the amount of the consideration for the sale. According to the sale-deed this was Rs. 399; but evidence was given to show that the market value put at its very highest would

* Second Appeal No. 121 of 1913, from a decree of E. E. P. R. c. c., Additional District Judge of Gorakhpur, dated the 20th of September, 1912, modifying a decree of Ali Muhammad, Munsif of Basti, dated the 14th of June, 1912.

(1) (1907) I. L. R., 29 All., 613.

(2) (1906) I. L. R., 28 All., 617.

not amount to more than Rs. 200. The court of first instance decreed the claim for Rs. 399. On appeal, however, this decree was modified and the pre-emptive price reduced to Rs. 200. The defendant vendee appealed to the High Court, and it was contended that as Rs. 399 were actually paid before the Sub-Registrar, and there was no evidence that any part of this sum was handed back to the purchaser, the court was bound to presume that this was the true consideration for the sale.

Munshi *Haribans Sahai*, for the appellant.

Maulvi *Muhammad Ishaq*, for the respondents.

RICHARDS, C.J., and TUDBALL, J.—The only question in this appeal is that of consideration. The consideration according to the sale-deed was Rs. 399. Evidence was given in the court below to show that the market value put at the very highest would not amount to Rs. 200. So far as the finding of the lower appellate court is a finding of fact as to the consideration it is binding upon us in second appeal. It is argued, however, on behalf of the appellant that as Rs. 399 was actually paid before the Sub-Registrar, and inasmuch as there was no evidence that any of this sum was given back, the court was bound to hold that that was the true consideration. Reliance is placed upon the case of *O'Connor v. Ghulam Haidar* (1). This ruling is in our opinion contrary to a series of rulings of this High Court, and was expressly dissented from in the case of *Abdul Majid v. Amolak and Ranji Lal* (2). In our opinion when it is alleged that the sale price is fictitious and put into the deed for the purpose of defeating pre-emption, it is open to the pre-emptor to give evidence to show that the market price is far below that stated in the sale-deed. If he gives such evidence to the satisfaction of the court, the latter is quite justified in arriving at its own conclusion as to what is the real consideration, and this notwithstanding that it is proved that the amount stated in the deed was paid before the Sub-Registrar. It is of course open to the vendee to show that there were special circumstances why he was ready to give and did give the actual price mentioned in the deed. We dismiss the appeal with costs.

Appeal dismissed.

(1) (1906) I. L. R., 28 All., 617. (2) (1907) I. L. R., 29 All., 618.

1914

RAM SARUP
SAHU
Q.
KHAM-
ULLAH
KHAN.