

1915

DRIGPAL
SINGH
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KALLU.

transferred in the deed of transfer. In our opinion having regard to the findings of the court below that the transferees from the mortgagees had actual knowledge that their vendor's title was merely that of a mortgagee and that they had no belief that they were purchasing an absolute interest, the decision of the court below should be affirmed.

The only other point is a question of calculation. This is a matter which was not brought to the notice of the lower appellate court and we do not think it can be entertained here.

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

Appeal dismissed.

1915
July, 26.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.
SURAJ BHAN (DEFENDANT) v. SOMWARPURI (PLAINTIFF) AND RANDHIR SINGH (DEFENDANT)*.

Act (Local) No. II of 1903 (Bundelkhand Alienation of Land Act), section 3—Agricultural tribe—Suit for pre-emption—Sanction.

The sanction contemplated in section 3 of the Bundelkhand Alienation of Land Act, 1903, applies to a voluntary transfer, and there is no provision in the Act which entitles an intending pre-emptor to get the sanction of the Collector to bring a suit for pre-emption.

Therefore a court is not entitled to grant a decree for pre-emption to a person who is not entitled to purchase the property in question not being a member of the agricultural tribe within the meaning of section 3 of the Bundelkhand Alienation of Land Act, 1903.

THE facts of this case are fully set out in the judgement.

Babu *Durga Charan Banerji* and Munshi *Haribans Sahai*, for the appellants.

The Honble Dr. *Sundar Lal*, for the respondents.

RICHARDS, C.J., and TUDBALL, J.:—This appeal arises out of a suit for pre-emption. The plaintiff pre-emptor has been found by both the courts to be a person who was not entitled to purchase the property in question having regard to section 3 of the Bundelkhand Alienation of Land Act, 1903, inasmuch as he was not a member of an agricultural tribe. The court of first instance dismissed the plaintiff's suit on this ground. The lower appellate court seems to have considered that the court might make a decree in the plaintiff's favour subject to the consent of the Collector to be subsequently

* First Appeal No. 65 of 1914, from an order of S. R. Daniels, District Judge of Allahabad, dated the 16th of February, 1914.

obtained, and remanded the case. We think the view taken by the learned District Judge was not correct. The plaintiff's alleged cause of action was the fact that the vendor being bound by a custom of pre-emption to first offer the property to the plaintiff, did not do so. We think that the Act, which provides that the property should not be sold to the pre-emptor, entirely absolved the vendor from any obligation to first offer the property to the pre-emptor. It is said that the subsequent sanction of the Collector might smooth over all these difficulties. It seems to us that the court's jurisdiction was either to grant a decree for pre-emption or not to do so. It would be obviously open to many objections that the sale of the property should be kept in abeyance until such time the Collector sanctions or refuses to sanction the sale. We may also point out that it is extremely doubtful whether the Collector could give any such sanction to a pre-emptor. There is no provision in the Act which entitles an intending pre-emptor to get the sanction of the Collector to bring a suit for pre-emption. If the sanction of the Collector could not be obtained before the bringing of the suit, it seems *a fortiori* that he could not grant the sanction subsequently. The sanction contemplated in section 3 is clearly in the case of a voluntary transfer. We allow the appeal, set aside the order of the learned District Judge and restore the decree of the court of first instance with costs in all courts.

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Appeal decreed.

