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DEBI PRASAD

several cases by this Court that in a suit for the ejectment of a tenant if the tenant pleads that he holds under a perpetual lease under which he is not liable to be ejected it is for the Revenue Court to decide whether the plea is correct or not, but at least three Judges of the Court are further committed to the view that a suit like the one now before us cannot be maintained because the plaintiff might have instituted a suit in the Revenue Court for the ejectment of the defendants in which the validity of the lease set up by the defendants might have been determined. The case is really covered by the principle of the decision of RICHARDS, C. J. and BANERJI J. in *Ram Singh v. Garraj Singh* (1), in which they approved of the view taken by my learned colleague. On the authorities I feel bound to hold that the question whether the defendants are entitled to hold the land under the perpetual lease set up by them is a "matter in respect of which" a suit might have been brought in the Revenue Court within the meaning of section 167 of the Tenancy Act, although the plaintiff could not in the Revenue Court have claimed any declaration regarding the lease. It may be doubted whether the authors of the section intended that it should be construed in such a comprehensive manner, but a *cursus curiae* has been established from which I am not prepared to dissent. I agree that this appeal should be allowed and the decision of the first Court restored.

BY THE COURT.—The appeal is allowed. The decree of the lower appellate Court is set aside and the decree of the first Court is restored with costs here and in the lower appellate Court.

Appeal allowed.

Before Sir Henry Richards, Knight, Chief Justice, and Mr Justice Tudball.
INDRAJ (PLAINTIFF) v. BROTHER CLEMENT, MISSIONARY (DEFENDANT) *

Per-emption—Custom—Vendor bound to offer to co-sharers—Refusal to purchase—Refusal to give more than a fixed price.

The custom in pursuance of which a right of pre-emption was claimed being that the vendor was bound to offer the property for sale to his co-sharers and only in case of their refusal he could sell to a stranger, the vendor offered the

* Second Appeal No. 53 of 1915, from a decree of L. Johnston, District Judge of Meerut, dated the 22nd of September, 1914, confirming a decree of Additional Munsif of Ghaziabad, dated the 8th of July, 1914.

(1) (1914) I. L. R., 37 All., 41.

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property in dispute to the pre-emptor, who offered only Rs. 160 for it *and refused to give more*. The vendor thereupon sold it for Rs. 235 to the defendant.

Held that the conduct of the plaintiff amounted to a refusal to purchase the property and the vendor was not obliged to give him the option of taking up the contract which he subsequently made for Rs. 235. *Kanhai Lal v. Kalka Prasad* (1) distinguished.

THIS was a suit for pre-emption claimed in accordance with the custom of the village, which was alleged to be that a co-sharer wishing to sell must first offer the property to his co-sharers. The vendor in this case offered the property to the pre-emptor, who offered Rs. 160 for it and refused to give more. The vendor then sold the property to a stranger for Rs. 235. The lower appellate Court held that this amounted to a refusal to purchase on the part of the pre-emptor and dismissed the suit. The plaintiff appealed to the High Court.

The appeal was heard under order XLI, rule 11, of the Code of Civil Procedure.

Dr. *Surendra Nath Sen*, for the appellant.

RICHARDS, C. J., and TUDBALL, J.—This appeal arises out of a suit for pre-emption. The alleged custom is that the co-sharer wishing to sell must first offer the property to his co-sharers. In the present case the court below has found that the vendor, wishing to sell first offered the property to the plaintiff and that the plaintiff offered only Rs. 160 and “*refused to give more*.” The vendor then went to the vendee and sold the property for Rs. 235. The court below has found under these circumstances that the plaintiff refused to purchase the property, and on that ground dismissed the suit. If this finding is justified it concludes the appeal. It seems to us that the court below was not only justified but was perfectly right in holding that the conduct of the plaintiff amounted to a refusal to purchase the property when it was offered to him. The vendor was entitled to assume that the plaintiff would not give Rs. 235 when he had refused to give more than Rs. 160.

Reliance is placed upon the case of *Kanhai Lal v. Kalka Prasad* (1). In that case, no doubt, the Court held that the vendor was bound, when he had concluded a definite arrangement with a stranger to offer the property to the person entitled to pre-empt,

(1) (1905). I. L. R., 27 ALL., 670.

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although he had previously refused to purchase. It does not appear very clearly from the report what was the custom found to exist. We think it can hardly be contended that where the custom is that the first offer must be made to the co-sharers the vendor must, after offering the property to the co-sharers, find a stranger willing to buy, conclude a bargain with him, and then return to his co-sharers and offer the property to them. Surely in a case like the present the vendor has complied with the custom if he has informed the pre-emptor of his desire to sell and ascertained from him either that he does not wish to buy or the price beyond which he is not willing to go. It would almost seem that a custom which required the vendor to do more than this would be an unreasonable custom. Of course the vendor must give clear information of his intention to sell, and we are very far from saying that if the pre-emptor expressed his willingness to purchase at a specific price the vendor would be justified in selling the property for practically the same price to a stranger without first informing the pre-emptor. In other words the vendor must act *bona fide* and the pre-emptor must have a fair opportunity of purchasing the property. Under the circumstances of the present case we think the view taken by the court below was correct and dismiss the appeal.

Appeal dismissed.

FULL BENCH.

Before Justice Sir George Knox, Mr. Justice Rafiq and Mr. Justice Piggott.

STAMP REFERENCE BY THE BOARD OF REVENUE.*

Act No II of 1899 (Indian Stamp Act), section 4—Stamp—Settlement—Gift of property made by one deed—Agreement to secure expenses of donor entered into by another.

Two brothers executed deeds each in favour of the other. One was a deed of gift of all the property of the executant, and it was stamped to its full value. The other was a deed coming within no known category, but it provided for the expenses during his life-time of the executant of the deed of gift and hypothecated certain property to secure the payment thereof; only a portion of the property thus hypothecated, however, was included in the deed of gift.

The second document bore a stamp of Rs. 10.

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