

appellate court with directions to restore it to its original number in the register and to try it after issue of notice as required by order I, rule 8, of the Code of Civil Procedure. The costs of this appeal will follow the event.

*Appeal allowed.*

1921

SHIAM LAL  
v.  
MUSAMMAT  
LALLI.

## MISCELLANEOUS CIVIL.

*Before Mr. Justice Piggott and Mr. Justice Walsh.*

RAM SUKH (DEFENDANT) v. MRS. L. E. O'NEAL (PLAINTIFF)\*

Regulations—1877—III (Ajmer Laws), sections 6 and 9—Pre-emption—

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December, 13.

“Sale”—Possession given and price paid, but no deed of sale executed.

*Hold* that according to the law in Ajmer-Merwara a right of pre-emption may be enforced where possession of the property claimed has been delivered and the price paid, although no deed of sale has been executed and registered.

*Begam v. Muhammad Yakub* (1) referred to.

THIS was a reference made under the Ajmer Courts Regulation, 1877, by the Chief Commissioner. The facts out of which it arose are thus stated in the referring order:—

“A resident of Ajmer named Birdha mortgaged his land usufructuarly to one Ram Sukh and subsequently sold it to him for Rs. 400. In order, however, to defeat a possible claim for pre-emption on the part of one Mrs. O’Neal, who owned the adjoining plot, no formal sale-deed was executed. This, at any rate, is the explanation given in the statement of the vendor and he further states that Ram Sukh paid the full price agreed upon and that his possession then changed from that of mortgagee to that of owner. Mrs. O’Neal becoming aware of the transfer filed a suit for pre-emption in respect of the plot of land. The claim was contested by Ram Sukh, who pleaded, *inter alia*, that as there was no regular sale-deed as required by section 54, Transfer of Property Act, there was no legal sale and, therefore, no suit for pre-emption lay. The court of first instance accepted the defendant’s plea and dismissed the suit, but the Additional District Judge in appeal, following the ruling in 16 Allahabad, 344, held that the plaintiff had obtained a right of pre-emption inasmuch as the defendant Ram Sukh had in fact purchased the plot

\* Civil Miscellaneous No. 355 of 1921.

(1) (1894) I. L. R., 16 All., 344.

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and had paid the consideration and obtained possession and that the statement of the vendor Birdha showed that no sale-deed had been written for the very reason that Ram Sukh apprehended that the plaintiff might bring a suit for pre-emption. He, therefore, decreed the suit.

In Ajmer-Merwara, the law governing pre-emption is given in Chapter 2 of the Ajmer Laws Regulation (III of 1877) though no definition of sale is given. The law of pre-emption obtaining in Ajmer-Merwara appears to be the same as that in force in Oudh. In the above circumstances the question of law which the Hon'ble the Chief Commissioner wishes to refer for the opinion of their Lordships of the Allahabad High Court is as follows:—

'As a law of pre-emption is provided by Statute in Ajmer-Merwara, should the Courts in this Province, in deciding whether a right to sue for pre-emption has arisen, accept the definition of sale contemplated in Muhammadan Law in accordance with the ruling in 16 Allahabad, 344, or decide the question of sale with reference to the provisions of the Transfer of Property Act?'

The Hon'ble the Chief Commissioner is inclined to concur in the view taken by the court of first instance, but as he understands that the ruling given in 16 Allahabad, 344, is followed in Oudh and as there is no precedent dealing with the question so far as Ajmer-Merwara is concerned, he would be grateful for a ruling from their Lordships of the Allahabad High Court."

On this reference—

Munshi *Ram Nama Prasad* for the petitioner.

The opposite party was not represented.

PIGGOTT and WALSH, JJ.:—This is a reference from the Chief Commissioner of Ajmer-Merwara. We have heard it today in the presence of counsel representing one of the parties concerned, but in the absence of the other party, Mrs. L. E. O'Neal. A communication has been received from the latter to the effect that she is not in a position to employ counsel to argue her case but would have wished to be present in person at the hearing. As she was prevented from being

present in person by the state of her health she asks us to postpone the hearing. In view of the purely legal and technical nature of the question submitted to us we find it a little difficult to understand what purpose would be served by Mrs. O'Neal being present in person. We decided in any case to hear counsel for the opposite party in the first instance, reserving the question whether we should fix a further date to permit of Mrs. O'Neal's presence after we have heard and considered his arguments. As we are prepared to return an answer to the reference which is in substance the answer Mrs. O'Neal would desire, we do not think it necessary to postpone the matter further. The question referred is this:—"As a law of pre-emption is provided by Statute in Ajmer-Merwara, should the courts in this Province, in deciding whether a right to sue for pre-emption has arisen, accept the definition of sale contemplated in Muhammadan Law in accordance with the ruling in I. L. R., 16 Allahabad, 344, or decide the question of sale with reference to the provisions of the Transfer of Property Act?"

It seems clear to us that the question must be answered with reference both to the principles underlying the Allahabad decision and to the wording of the Ajmer Regulation (No. III of 1877) where it deals with the question of pre-emption. We note particularly the definition in section 6, Chapter II, of the said Regulation, where a right of pre-emption is stated to be a right to acquire immovable property in preference to other persons in certain specified cases. Then in section 9 we find that a right of pre-emption arises in certain cases in respect of property to be sold, not necessarily property which has been sold already. Under the circumstances we are clearly of opinion that the principles laid down in the Allahabad ruling mentioned in the reference, *Begam v. Muhammad Yakub* (1), should be followed in cases where a right of pre-emption is claimed under the statute law of Ajmer-Merwara. A further question may arise as to whether or not, after a pre-emption suit has been decreed under circumstances similar to those of the case now before us, the pre-emptor

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may not lawfully require and claim as one of the reliefs in the suit, the execution of a formal document completing the transfer in his favour, so as to fulfil the requirements of the Registration law and of section 54 of the Transfer of Property Act (IV of 1882). This question, however, does not directly arise out of the reference made to us, which we think we have sufficiently answered. As this reference has been heard *ex parte* we do not make any order as to the costs of the hearing in this Court.

*Reference answered.*

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December, 3.

## APPELLATE CIVIL.

*Before Sir Grimwood Mears, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.*

DEBI RAI AND OTHERS (APPLICANTS) v. PRAHLAD DAS AND OTHERS  
(OPPOSITE PARTIES).\*

*Act No. XXVI of 1920 (Civil Procedure Code Amendment Act) section 3 (i)  
—Civil Procedure Code (Act V of 1908), order XLV, rule 7—Appeal to His Majesty in Council—Deposit of security—Limitation.*

*Held that the provisions of Act No. XXVI of 1920 do not apply to an appeal from a decree passed before the coming into force of that Act.*

THE facts of this case sufficiently appear from the order of the Court.

Maulvi Iqbal Ahmad, for the appellants.

Mr Nihal Chand, for the respondents.

MEARS, C. J., and BANERJI, J. :—Debi Rai and others, who are the appellants in this matter, had a decree passed against them on the 9th of December, 1920. On the 7th of June, 1921, they made an application that Rs. 4,000, then in existence in cash, might be received and war bonds or Government security notes might be purchased in the names of the petitioners. The order that was made on that application, which was, it is to be noticed, within six months from the date of the decree, was "lay before the Bench concerned." At the next sitting of the Bench concerned an application was made that this money might be received and the order was made. That order was made five days beyond the period of six months from the date of the decree. It should be

\* Application in Privy Council Appeal No. 8 of 1921.