

1925
December,
11.

Before Mr. Justice Walsh and Mr. Justice Kanhaiya Lal.

JAGRUP SINGH (PLAINTIFF) v. INDRASAN PANDE AND OTHERS (DEFENDANTS).*

Act (Local) No. XI of 1922 (Agra Pre-emption Act), section 12, sub-section (3)—Pre-emption—"Person claiming pre-emption"—Vendee.

Where there are more persons than one of the same class claiming pre-emption, the vendee is "a person claiming pre-emption" within the meaning of section 12, sub-section (3) of the Agra Pre-emption Act, 1922. *Ishwar Dat Upadhiya v. Mahesh Dat Upadhiya* (1), followed.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgment of the Court.

Babu Piari Lal Banerji, for the appellant.

Dr. Surendra Nath Sen, for the respondents.

WALSH and KANHAIYA LAL, JJ. :—This appeal raises a simple question of law on the construction of section 12, sub-section (3) of the new Pre-emption Act. That question is this. The sub-section providing that in a case "where there are more persons than one of the same class claiming pre-emption," is the vendee, or proposed vendee, or contemplated vendee, or intended vendee, "a person claiming pre-emption" within the meaning of the section? In *Ishwar Dat Upadhiya v. Mahesh Dat Upadhiya* (1) a Bench of this Court, including one member of the Court now sitting, decided that question in the affirmative. It is important in connection with the new Act that the decisions of this Court should be consistent. In that case the respondents were unrepresented. But in this case the respondents have had the advantage of Dr. Sen to represent them and we do not think that anything could

* Second Appeal No. 1628 of 1924, from a decree of Krishna Das, Additional Subordinate Judge of Azamgarh, dated the 30th of July, 1924, confirming a decree of Kaustubha Nand Joshi, Munshi of Muhammadabad Gohna, dated the 31st of March, 1924.

(1) (1925) I.L.R., 47 All., 910.

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be said on behalf of the other view which has not already been said. We agree with the decision on this further ground. The ordinary meaning of "to pre-empt" is to purchase in preference to others, and pre-emption is the effect of the purchase. The vendee, if he is successful, does in fact pre-empt and is, therefore, properly spoken of as a person claiming pre-emption. Whereas "the right of pre-emption" is spoken of in other parts of the Act, in this particular sub-section the word used with reference to what is being claimed is simply pre-emption. We are further of opinion that this interpretation satisfies another test, namely, the true construction of section 10 where it is quite obvious that the expression "equal" or "inferior" right of pre-emption is used with reference to the vendee. It has been found that the plaintiff is related to one of the vendors and the husband of the other vendor within four degrees. The *wajib-ul-arz* filed shows that the property in question was obtained by one of the vendors and the husband of the other vendor from their fathers, respectively, who were own brothers. The appeal must be allowed and the suit decreed.

Appeal allowed.

MISCELLANEOUS CIVIL.

Before Mr. Justice Dalal and Mr. Justice Boys.

CHITAR MAL (PLAINTIFF) v. PANCHU LAL AND OTHERS
(DEFENDANTS).*

Act No. IX of 1908 (Indian Limitation Act), section 7; schedule I, article 14A—Adverse possession—Idol—Alienation of property belonging to an idol.

An idol is under no disability of the kind referred to in section 7 of the Indian Limitation Act, 1908; and if property

* Miscellaneous Case No. 668 of 1925.

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