

Before Mr. Justice Sulaiman and Mr. Justice Pullan.

SURAJ MAL AND ANOTHER (DEFENDANTS) *v.* SHANKAR
AND ANOTHER (PLAINTIFFS) AND PHULO AND OTHERS
(DEFENDANTS).*

1929
April, 22.

Act (Local) No. XI of 1922 (Agra Pre-emption Act), sections 14 and 15—Notice to pre-emptors—Service of notice necessary.

Under section 14 of the Agra Pre-emption Act it is not enough that a notice by registered post is sent to the persons having a right of pre-emption, but service of the notice on such persons is essential. The use of the word "issue" in section 15 is ambiguous, but reading the whole of that section leaves no doubt that service on the pre-emptors is essential.

Messrs. S. C. Goyle and Peary Lal Banerji, for the appellants.

Dr. Kailas Nath Katju, for the respondents.

SULAIMAN and PULLAN, JJ. :—This is a defendants' appeal arising out of a suit for pre-emption. Before the sale took place a notice was sent by registered post to the plaintiffs, but the lower appellate court has found that this was not actually served on them.

The defendants appealed and on their behalf a ground was taken that the mere posting of a notice was quite sufficient and that service of it was immaterial. This contention cannot be accepted. Section 14 of the Act does not say that a notice is merely to be sent to all the persons having a right of pre-emption but prescribes that the co-sharer proposing to sell may "give notice by registered post to all such persons", which undoubtedly implies that the notice must be given to the persons concerned. The use of the word "issue" in section 15 is

* Second Appeal No. 792 of 1927, from a decree of Aghornath Mukerji, District Judge of Meerut, dated the 18th of June, 1926, confirming a decree of Bhagwan Das, Additional Subordinate Judge of Meerut, dated the 15th of February, 1926.

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ambiguous, but reading the whole of that section, particularly the latter portion of it which lays down that the right of pre-emption would be extinguished unless such person within the period of one month of the receipt of the notice communicates his intention to purchase, no doubt is left that service on the pre-emptors is essential. Their right is only extinguished when they allow one month to expire after the receipt of such notice. There is therefore no force in this ground.

The next ground relates to the question of consideration. [This portion of the judgement, not material to this report, is omitted.] We therefore think that there is no force in this appeal and it is dismissed with costs.

Before Mr. Justice Mukerji and Mr. Justice Niamat-ullah.

BAIJNATH (DEFENDANT) v. DHANI RAM (PLAINTIFF).*

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 April, 26.

Court fees—Deficiency in lower court demanded by appellate court from respondent—Non-compliance by respondent—Power to refuse him hearing—Power to refuse him costs.

Where the respondent (plaintiff), on being called upon by the appellate court to make good a deficiency in the court fee paid by him in the first court, does not comply, the appellate court can not only stay issuing its decree if it be in his favour, but can refuse to hear him on the appeal and can, if the appeal fails, refuse him costs. *Mohan Lal v. Nand Kishore* (1), referred to.

Messrs. B. Malik and Baleshwari Prasad, for the appellant.

Mr. Satish Chandra Das, for the respondent.

MUKERJI and NIAMAT-ULLAH, JJ. :—This is a second appeal by one who was the defendant in the

* Second Appeal No. 1781 of 1927, from a decree of E. Bennet, District Judge of Agra, dated the 25th of May, 1927, confirming a decree of Y. S. Gahlant, Munsif of Agra, dated the 19th of February, 1927.

(1) (1906) I. L. R., 28 All., 270.