

1926

EMPEROR
v.
MANTU
TIWARI.

or diary, but we have no jurisdiction to dictate to the District Magistrate what he should do in this or any other matter, which is solely vested in his discretion, or to make any declaration about any order relating to such notes which he may have issued. The most we can do is to suggest, as we have done, a practical way of dealing with the matter.

We, therefore, reject the reference and direct the record to be returned to the Sessions Judge with the foregoing observations.

Reference rejected and record returned.

APPELLATE CIVIL.

Before Mr. Justice Lindsay and Mr. Justice Sulaiman.

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October, 29.

RAM KHELAWAN AND OTHERS (DEFENDANTS) v. BANKE BIHARI AND ANOTHER (PLAINTIFFS) AND RAM KALI (DEFENDANT).*

Act (Local) No. XI of 1922 (Agra Pre-emption Act), section 19—Pre-emption—Effect of acquisition of an interest in the mahal by the defendant vendee pending the suit.

Under the Agra Pre-emption Act, 1922, the right of a plaintiff pre-emptor may be defeated by the acquisition by the defendant vendee at any time before decree, by means of gift, of an interest in the mahal in which the property in suit is situated. *Qudrat-un-nissa Bibi v. Abdul Rashid* (1), followed.

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

Munshi Narain Prasad Ashthana, for the appellants.

The respondents were not represented.

LINDSAY and SULAIMAN, JJ. :—This is a defendants' appeal arising out of a suit for pre-emption. While the suit was pending the defendants obtained a share under a document purporting to be a deed of

* Second Appeal No. 1093 of 1925, from a decree of Muhammad Said-ud-din, Second Additional Subordinate Judge of Allahabad, dated the 26th of March, 1925, reversing a decree of Brij Mohan Lal, Munsif of East Allahabad, dated the 18th of November, 1924.

gift and on the strength of it pleaded that they had equal rights with the plaintiffs so as to deprive them of any preference. The plaintiffs in their turn brought a second suit to pre-empt this transaction, alleging it to be one of sale. The court of first instance dismissed the plaintiffs' suits. On appeal the plaintiffs' suit to pre-empt the sale-deed has been decreed, but the other suit has been dismissed on a finding that the transaction was really one of gift. The defendants come up in second appeal and urge that in consequence of the finding that they had acquired a share in the mahal by virtue of a deed of gift the suit to pre-empt the sale ought to have been dismissed. This contention, in our opinion, must prevail. By reason of the acquisition of an additional share in the mahal by gift, the defendants destroyed the plaintiffs' right of pre-emption; they no longer had a right to be substituted in place of the vendees when the time for the passing of the decree came. No decree in their favour could, therefore, be passed in view of the provisions of section 19 of the Agra Pre-emption Act. This interpretation of the section has been accepted in the case of *Qudrat-un-nissa Bibi v. Abdul Rashid* (1) with which we agree. The result, therefore, is that this appeal must be allowed and the decree of the lower appellate court set aside. We restore the decree of the court of first instance, with this variation that we think that the plaintiffs should be allowed their costs of the first court inasmuch as they were perfectly justified in instituting the suit on the date when they did bring it. The plaintiffs, however, must pay the costs of the defendants in the lower appellate court as well as in this Court.

Appeal allowed.

(1) (1926) I.L.R., 48 All., 616.

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