

1929
January, 24.

Before Mr. Justice Sulaiman and Mr. Justice Kendall.

JAMNA PRASAD (DEFENDANT) v. MUHAMMAD ZAHIR-
UDDIN (PLAINTIFF).*

Act (Local) No. XI of 1922, (Agra Pre-emption Act), sections 4(3), 11, 12—Sale of an isolated plot—Pre-emptible by a co-sharer in the mahal—Sale of a site of a building not exempted from the operation of the Act.

A right of pre-emption accrues in favour of co-sharers in the mahal even when a petty proprietary interest is transferred.

Land covered by buildings is not exempt from the operation of the Act and is liable to be pre-empted.

Pandit *Uma Shankar Bajpai*, for the appellant.

Mr. K. O. Carleton, Mr. S. Mohammad Husain and Maulvi *Mushtaq Ahmad*, for the respondents.

SULAIMAN and KENDALL, JJ. :—Three points have been urged in this appeal. The first is that an isolated plot of land is not pre-emptible under the Act. We are unable to accept this contention. Under sections 11 and 12 a right of pre-emption accrues in favour of the co-sharers in the mahal even when a petty proprietary interest is transferred.

The second point is that the land covered by such buildings is exempted from the operation of the Act. This contention also cannot be accepted. Section 4, sub-clause (3) makes the Act applicable to land, which includes things attached to the earth or permanently fastened to anything attached to the earth, when sold or foreclosed along with the land to which they are attached. This, in our opinion, includes buildings which are attached to the earth. We may in this connection point out that the expression "attached to the earth" has

* Second Appeal No. 1262 of 1926, from a decree of D. L. Johnston, District Judge of Pilibhit, dated the 20th of March, 1926, confirming a decree of Lal Bhagwati Dayal Singh, Munsif of Pilibhit, dated the 9th of December, 1925.

been defined in section 3 of the Transfer of Property Act as meaning rooted in the earth or embedded in the earth as in the case of walls or buildings. There is no reason to suppose that that expression in this Act has a different meaning. It is by virtue of such a definition that house property is treated as immoveable property under the Transfer of Property Act and also under the General Clauses Act, vide *Abdul Khan v. Shakira Bibi* (1).

[The rest of the judgment is not material for the purposes of the report].

Appeal dismissed.

Before Mr. Justice Banerji and Mr. Justice King.

MANGALI PRASAD AND ANOTHER (PLAINTIFFS) v. BABU
RAM AND OTHERS (DEFENDANTS).*

1929
JAMNA
PRASAD
v.
MUHAMMAD
ZAKIRUDDIN.

1929
January, 25

Award purporting to partition property—Signed by parties—Registration—Admissibility in evidence—Relinquishment of right of redemption by Hindu father—Without legal necessity and benefit to the family—Not binding on his sons.

An award does not require registration merely because it is signed by the parties to the reference and purports to partition the property.

Where a Hindu father relinquished his right of redemption without any legal necessity or benefit to the family, the relinquishment was not binding on the sons.

Tek Lal Singh v. Sripati Chowdhury (2), referred to, *Wazir Ali v. Mahbub Ali* (3), followed.

Pandit *Uma Shankar Bajpai*, for the appellants.

Munshi *Narain Prasad Asthana*, for the respondents.

BANERJI and KING, JJ. :—This appeal arises out of a suit for possession of one-third share of a house. The

* Second Appeal No. 255 of 1926, from a decree of Farid-ud-din Ahmad Khan, Subordinate Judge of Mainpuri, dated the 5th of November, 1926, reversing a decree of Lachhman Prasad, Munsif of Mainpuri, dated the 3rd of September, 1924.

(1) (1927) I. L. R., 50 All., 348. (2) (1913) 20 Indian Cases, 860.

(3) (1914) 22 Indian Cases, 412.