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MAHABIR PRASAD v. CHITTU LAL.

A right of pre-emption as defined in section 4(9) means "the right of a person on a transfer of immovable property to be substituted place of the transferee by reason of such right". There is no explanation to section 20 similar to that subsequently added to section 12(3) which would justify the inference that an ex-proprietary tenant is to be deemed to have a right of pre-emption equal or superior to that of a co-sharer. Nor can any such inference be drawn from the language of section 9. It seems to us that in view of the definition of the "right of pre-emption" given in the Act it is not possible to hold that an ex-proprietary tenant has a right of pre-emption equal or superior to that of a co-sharer. All that is provided is that no right of pre-emption shall accrue on a sale to him taking place, and not that a right of pre-emption which has already accrued shall be extinguished. We must accordingly hold that the plaintiffs' right of pre-emption subsists.

The lower appellate court has found that the correct sale price is Rs. 208-3-3. We accordingly allow this appeal and setting aside the decree of the lower appellate court restore the decree of the court of first instance, and extend the time for payment by two months from this date.

MISCELLANEOUS CIVIL.

Before Mr. Justice Mukerji and Mr. Justice Bennet.

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February, 12.

IN THE MATTER OF L. C. DESOUZA*

Income-tax Act (XI of 1922), section 63—General Clauses Act (X of 1897), section 27—Evidence Act (I of 1872), section 4—Service of notice by post—Presumption—Not conclusive—Minor son taking delivery of registered letter addressed to the father—Post Office Rules, paragraph 113.

A notice under section 22(2) of the Income-tax Act was sent by registered post, acknowledgment due, to the assessee and was delivered to a son of his who signed the receipt without

*Miscellaneous Case No. 714 of 1931.

stating that he was signing on behalf of the addressee. This son was a minor, but he had nearly attained the age of majority and was an intelligent person and had on previous occasions also received registered letters addressed to his father. On the question whether there was proper service of the notice, *Held*—

The provision as to service of notices by post in section 63 of the Income-tax Act has to be read with section 27 of the General Clauses Act, and in view of the language employed in section 27 the presumption that the service through registered post has been effected is a rebuttable presumption and not conclusive. The words, "unless the contrary is proved", in section 27 refer both to the service and to the time thereof. Even assuming that those words do not refer to the service, the analogy of section 4, paragraph 2 of the Evidence Act is applicable to show that the presumption is a rebuttable one.

According to the rule contained in paragraph 113 of the Post Office Guide, if an agent of the addressee signs the receipt the delivery of a registered article is a good delivery. The minority of the addressee's son did not in law prevent him from being the addressee's agent for the purpose of accepting delivery of a registered article, and the circumstances showed that he acted as the addressee's agent in taking delivery and signing the receipt. The service of the notice was accordingly a good service.

Dr. *K. N. Katju*, for the assessee.

Mr. *U. S. Bajpai*, for the Crown.

MUKERJI and BENNET, JJ. :—This is a reference under section 66(2) of the Income-tax Act by the learned Commissioner of Income-tax under the following circumstances. The assessee, Mr. L. C. deSouza, is a resident of Cawnpore. On the 29th of May, 1930, the Income-tax Officer of Cawnpore issued, by means of registered post, acknowledgment due, a notice under section 22(2) requiring him to submit by July 2 or within 30 days of the service of the notice a return of the income for the assessment year 1930-31. This notice was not complied with, although it was delivered by the postal peon to the assessee's son, Mr. J. deSouza. There was another notice issued under section 22, clause (4), of the Income-tax Act and it

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was served on another son of Mr. deSouza. At one time there was a controversy about the validity of this notice, but the Assistant Commissioner of Income-tax having held that this service was not good we are not called upon to express any opinion on that point.

As no compliance had been made of the notices issued, an assessment was made on Mr. L. C. deSouza under section 23, sub-section (4), of the Income-tax Act.

Mr. deSouza, when a notice of demand was served on him, made an application under section 27 of the Income-tax Act to have the assessment revised. He had to show sufficient cause for non-compliance with the notice and one of the points that were raised was that the service of notice issued on the 29th of May, 1930, was not a proper service. Certain statements of facts were made by him, but those facts were not accepted by the Assistant Commissioner of Income-tax and we are not concerned with those facts.

The Commissioner of Income-tax has stated the following question for our answer: "In the circumstances of this case, did the fact that the postal acknowledgment receipt was signed by the assessee's son who was a minor, and signed without stating the name of the addressee for whom he purported to sign, vitiate the service of the notice under section 22(2) which was issued by registered post?"

There are two contentions before us. On behalf of the assessee it is argued that the rule as to service by post in section 63 of the Income-tax Act has to be read along with section 27 of the General Clauses Act, and in view of the language employed in section 27 there is a rebuttable presumption as to the service effected through post. On behalf of the Crown it is argued that section 27 of the General Clauses Act has two portions. One relates to the service being effected and the other relates to the time at which service is effected,

and it is further argued that in respect of the service the presumption is conclusive when the notice has been posted, properly addressed and prepaid and in a registered cover.

We have considered the two arguments and are of opinion that the presumption raised by section 27 is a rebuttable one. This appears from the language employed by section 27 itself, and even if the language did not warrant any such conclusion, analogy of section 4 of the Indian Evidence Act would lead to the same conclusion.

To consider section 27 first, we find the words "unless the contrary is proved" used. Those words refer both to the service and to the time. It is true that those words come just before the words "to have been effected at the time", but the whole import of the section seems to be that the presumption holds good unless the contrary is proved. There is no reason to suppose that the first portion of the section containing the words "service shall be deemed to be effected" is to be taken as a completed sentence before we read the words "to have been effected at the time, etc".

Assuming that the words "unless the contrary is proved" as used in section 27 do not apply to the words "shall be deemed to be effected", we may apply by analogy section 4, paragraph 2 of the Indian Evidence Act. It lays down: "Whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved." These words do not, in terms, apply to the General Clauses Act, but we find that the words used are "shall be deemed", as we have got the words "shall presume" in paragraph 2 of section 4.

Let us take an example which no doubt is an extreme case, but it will show what would be the consequence of the contrary conclusion. The example we have in mind is this. Suppose a notice is posted

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as laid down by section 27 of the General Clauses Act and the notice is actually returned as undelivered by the post office. If the presumption is conclusive, or in other words if the evidence afforded by "properly addressing, prepaying and posting by registered post" be conclusive evidence of service of notice, the fact that the notice has been returned as unserved will not be admissible as evidence of the fact of non-service. This could hardly have been considered a right rule of law by the legislature. We hold, therefore, that the presumption raised is a rebuttable presumption.

Now the question is whether the fact that the notice was delivered at the place of the assessee is a good service. For this purpose we have to look to the rules framed under the Post Office Act in the Postal Guide. According to paragraph 113 relating to delivery of articles, "No registered article will be delivered to the addressee unless or until he or his agent has signed a receipt for it, etc." The service therefore, of a notice will be good on the assessee if it is received either by him or by his agent.

This leads us to consider whether the assessee's son Mr. J. deSouza was or not an agent for his father in the circumstances of this particular case.

We find, according to the finding of fact arrived at by the Assistant Commissioner of Income-tax, that Mr. J. deSouza was technically a minor and was possessed of ordinary intelligence. This would mean that Mr. J. deSouza was verging on the age of majority and was an intelligent man. We have further facts that he was living with his father and that when on previous occasions notices had to be served on Mr. deSouza the assessee, they were taken delivery of by his sons. The fact that Mr. J. de Souza was a minor did not prevent him from being an agent of his father for the purpose of accepting delivery of an article. Under section 184 of the Contract Act as between the principal, the father in

this case, and third persons, any person may become an agent. It follows, therefore, that in proper circumstances a minor son may be an agent of his father. We hold, in the circumstances, that the delivery of the postal article, namely the notice, was a good delivery. It would follow, therefore, and we hold accordingly, that the service of the notice in the circumstances of this case was a good service.

Before Mr. Justice King.

A. U. JOHN AND OTHERS (DEFENDANTS) *v.* SURAJ BHAN AND OTHERS (PLAINTIFFS).*

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February, 13.

Court Fees Act (VII of 1870), *section* 7(*iv*)(*c*); *schedule I, article* 1; *schedule II, article* 17(*iii*)—*Suit for money and declaration of priority—Appeal by defendants for setting aside the declaration*—Ad valorem *court fee payable on appeal.*

Plaintiffs brought a suit against a company and against certain debenture holders for recovery of a sum of money and also for a declaration that the plaintiffs' money had priority over the debentures. The claim for money was decreed as against the company and the declaration sought was granted. The debenture holders appealed for the setting aside of this declaration. The appeal was valued at the amount decreed, and a court fee of Rs. 10 only was paid. *Held* that an *ad valorem* court fee was payable on the amount decreed, or on the value of the debentures, whichever was less. Article 17(iii) of the second schedule of the Court Fees Act was not applicable, as the suit was not to obtain a declaratory decree where no consequential relief was prayed, but was primarily a suit for money where a declaration was also prayed for as a further relief. Moreover, the relief claimed in the appeal was not a mere declaration but a modification of the trial court's decree, which was a substantial relief. The court fee was accordingly payable *ad valorem*, under article 1 of schedule I, upon the amount or value of the subject matter in dispute in the appeal, namely the exoneration of the property charged under the debentures, to the extent of the value of the debentures, from liability to satisfy the decretal amount.

*Stamp Reference in First Appeal No. 135 of 1932.