

*Before Justice Sir Shah Muhammad Sulaiman and  
Mr. Justice Young.*

1932  
February, 12.

MAHABIR PRASAD AND ANOTHER (PLAINTIFFS) *v.* CHITTU  
LAL AND ANOTHER (DEPENDANTS)\*

*Agra Pre-emption Act (Local Act XI of 1922), sections 9  
and 20—Sale by purchaser to ex-proprietary tenant—  
First sale pre-emptible—Ex-proprietary tenant not a  
pre-emptor superior or equal to a co-sharer.*

Where a right of pre-emption has accrued in respect of a sale it subsists and is not extinguished by the circumstance that before the institution of the suit for pre-emption the purchaser has sold the property to an ex-proprietary tenant. Section 9 of the Agra Pre-emption Act does not say that if the property ultimately passes on to an ex-proprietary tenant the right of pre-emption previously accrued is automatically extinguished. It only lays down that no right of pre-emption shall accrue upon the sale to such a person.

Section 20 of the Act is applicable to the case of a transfer by the purchaser before the institution of the suit, but as in view of the definition of a right of pre-emption it cannot be held that an ex-proprietary tenant is a person having a right of pre-emption equal or superior to that of co-sharers, the suit for pre-emption by co-sharers is not defeated by the provisions of section 20.

*Mr. Shambhu Nath Seth*, for the appellants.

*Messrs. S. B. L. Gaur and Kirpa Shankar  
Misir*, for the respondents.

SULAIMAN and YOUNG, JJ. :—This is a plaintiffs' appeal arising out of a suit for pre-emption. On the 5th of July, 1927, Chittu Lal sold his *sir* rights to Madari, with the result that he became an ex-proprietary tenant of the plots. He transferred his entire proprietary interest and ceased to be a co-sharer. Subsequently on the 30th of May, 1928, apparently on getting notice of the claim of pre-emption, Madari sold the property back to Chittu Lal. The suit for pre-emption was instituted on the 4th of July, 1928, i.e., within one year of the original sale deed. In the

\*Second Appeal No. 987 of 1929, from a decree of J. C. Malik, Additional Subordinate Judge of Cawnpore at Fatehpur, dated the 12th of March, 1929, reversing a decree of N. P. Sanyal, Munsif of Fatehpur, dated the 28th of November, 1928.

plaint the plaintiffs mentioned the dates of both the documents and also stated that the cause of action arose on both the dates and they wanted a decree for pre-emption as against both the defendants. The claim was decreed by the first court but the lower appellate court has dismissed the suit, holding that there has been a transfer to an ex-proprietary tenant within the meaning of section 9 of the Agra Pre-emption Act and the suit is not maintainable.

There is no doubt that so far as the second sale, of the 30th of May, 1928, is concerned no right of pre-emption accrued on it. Section 9 makes it quite clear that no right of pre-emption accrues on a sale to an ex-proprietary tenant. Therefore if a suit had been brought more than one year after the 5th of July, 1927, the plaintiffs would not have been entitled to pre-empt the property as against Chittu Lal on the strength of the transfer made to him on the 30th of May, 1928. But there can also be no doubt that the right to pre-empt accrued under section 11 of the Act on the 5th of July, 1927, in favour of the plaintiffs against Madari, and Chittu Lal is a subsequent transferee and therefore a representative of Madari. The right of pre-emption thus accrued must subsist unless it has been extinguished. Section 9 does not say that if property ultimately passes on to an ex-proprietary tenant the right of pre-emption previously accrued is automatically extinguished. It only lays down that no right of pre-emption shall accrue on a sale to such a tenant. It is section 20 which is applicable to a case where property is reconveyed by a vendee to another person before the institution of the suit. If the property is transferred to "a person having a right of pre-emption equal or superior to that of the plaintiff", then no suit shall lie. It is therefore obvious that a suit can be brought against Chittu Lal, who being an ex-proprietary tenant has no right of pre-emption equal or superior to that of the plaintiffs.

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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.*

IN THE MATTER OF L. C. DESOUZA\*

1932  
February, 12.

*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.