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EMPEROR
v.
BANS GOPAL*King, J.*

that trials for offences under certain sections of Ordinance X of 1932 should be continued notwithstanding the expiration of that Ordinance, but that trials for offences under other sections of that Ordinance, which are not specified, should not be continued. The maxim of interpretation, "*Expressio unius est exclusio alterius*" is clearly applicable. We must take it that the legislature intended that the trial of offences under section 17 of Ordinance X should not be continued.

As regards the second charge I think it is unnecessary, and indeed improper, to express any opinion at the present stage. It remains to be seen whether the accused can be proved to have assisted in the management of an unlawful association, and I express no opinion on that point.

BY THE COURT:—This revision is allowed in part and the prosecution under the first charge is quashed without interfering with the trial under the second charge.

APPELLATE CIVIL

*Before Sir Shah Muhammad Sulaiman, Chief Justice,
and Justice Sir Lal Gopal Mukerji*

RAM SINGH (PLAINTIFF) *v.* DEO NARAIN AND OTHERS
(DEFENDANTS)*

Pre-emption—Joint Hindu family—Sale by adult members—Whether a minor member entitled to pre-empt—Consent—Estoppel—Questioning validity of the sale in pre-emption suit.

On a sale of joint family property by the adult members of a joint Hindu family a minor member of the family brought a suit to pre-empt the sale. *Held*, that the suit did not lie; the principle of estoppel applied to the suit, inasmuch as a person in the position of a vendor could not pre-empt his own sale.

*Second Appeal No. 897 of 1930, from a decree of Ruo Kishen Agha, Additional Subordinate Judge of Allahabad, dated the 24th of January, 1930, confirming a decree of Hardeo Singh, Munsif of East Allahabad, dated the 29th of April, 1929.

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In a joint Hindu family the *karta* can and does act in the interest of the entire family, and in such a case the fact that no consent could be given by the minor himself is immaterial.

In a suit for pre-emption the validity of the sale cannot be challenged; it has to be taken as a valid and good sale, because the suit for pre-emption is a suit for substitution only; and if the sale is valid and binding on the minor member, he cannot claim to pre-empt it, his position being that of a vendor.

Mr. *Ambika Prasad*, for the appellant.

Messrs. *Ram Nama Prasad* and *Kanhaiya Lal*, for the respondents.

SULAIMAN, C.J., and MUKERJI, J. :—This is a pre-emption appeal and the pre-emptor, who is the appellant before us, is a minor. The pedigree given in the written statement of the vendee, the defendant No. 1, is accepted by the learned counsel for the appellant. It shows that the elder brother of the appellant Ram Singh and the own paternal uncles of Ram Singh, namely Jang Bahadur Singh, Jagdeo Singh and Udant Singh, together with Bisheshar Singh, a distantly related collateral, sold the property in suit to the respondent, Deo Narain. Ram Singh claims pre-emption, and his suit failed because it was held that as a member of the joint Hindu family he had no right to maintain the suit.

In this Court it has been contended that Ram Singh, being a minor, is entitled to pre-empt, and, in the alternative, he is at least entitled to pre-empt the share of Bisheshar Singh.

On the question whether Ram Singh as a minor member of the family is entitled to pre-empt it has been urged that no consent could be given on behalf of Ram Singh by the members of his family. We are not prepared to accept this argument as sound. In a joint Hindu family the *karta* can always act and does always act in the interest of the entire family. In this particular case it has been found as a fact that Ram Singh

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is joint with his elder brother and his uncles. Ram Singh had challenged the validity of the transaction as a sale but had to give up the contention, and we presume, because he found that the sale was a good one. If the sale was binding on Ram Singh, certainly it cannot be said that Ram Singh is entitled to pre-empt the property although he cannot challenge the validity of the sale. In a suit for pre-emption the validity of the sale cannot be challenged. It has to be taken as a valid and good sale, because the suit for pre-emption is a suit for substitution only. Ram Singh has to accept all the risk, if any, which Deo Narain took in making a purchase, with Ram Singh as a minor member of the family. We are of opinion that the principle of estoppel as enunciated in the case of *Mohammad Nujaf v. Badri Narain Prasad* (1) holds good.

The next point is that Bisheshar Singh's share may be pre-empted by Ram Singh, it being an admitted fact on the part of Deo Narain, the vendee, that Bisheshar Singh was separate from the other vendors. The plea could have some force but for the fact that we have not got sufficient material on the record to enable us to give the plaintiff the relief he now asks for. He never claimed this right to claim Bisheshar Singh's share alone either in the court of first instance or in the court of appeal. The result is that we do not know what is the share of Bisheshar Singh and what is the proportionate price which the vendee is to get for the share sold by Bisheshar Singh. In the circumstances we cannot allow a new point to be taken.

The result is that the appeal fails and is hereby dismissed with costs.

(1) [1929] A. L. J., 899.