

1930

GOPAL RAI  
v.  
BAJI NATH  
RAI.

the case back to that court with directions to restore it to its original number on the file and dispose of it according to law. In view of the fact that this objection has been taken for the first time in appeal before us, we direct that the parties should bear the costs of the proceedings incurred so far.

Before Justice Sir Shah Muhammad Sulaiman and  
Mr. Justice Kendall.

1930  
July, 2.

BENDRABAN (PLAINTIFF) v. RAJPAAT SINGH AND OTHERS  
(DEPENDANTS).\*

*Agra Pre-emption Act (Local Act XI of 1922), section 4(10)*  
—“Sale”—Transfer of property for a price but effected  
under a compromise decree without registered sale deed—  
Not pre-emptible.

By section 4(10) of the Agra Pre-emption Act a sale which is pre-emptible must be strictly a sale as defined in the Transfer of Property Act. A transfer of property in exchange for a price, but effected by means of a compromise decree and not by a registered instrument of sale as required by section 54 of the Transfer of Property Act, cannot be treated as a sale as defined in that Act and is, therefore, not pre-emptible.

Mr. N. Upadhiya, for the appellant.

Messrs. A. P. Pandey and M. L. Chaturvedi, for the respondents.

SULAIMAN and KENDALL, JJ. :—This is a plaintiff's appeal arising out of a suit for pre-emption. The vendors first sold the property on the 28th of August, 1923, but before the suit for pre-emption was filed the vendees retransferred the property to the vendors on the 24th of July, 1924. The suit for pre-emption was, however, filed, but was dismissed on the 10th of November, 1924, on the ground that the property had been resold. Subsequently a brother of the vendees, who had resold the

\*Second Appeal No. 2059 of 1927, from a decree of Syed Iftikhar Husain, District Judge of Azamgarh, dated the 26th of August, 1927, reversing a decree of Mathura Prasad, Munsif of Faveli, dated the 7th of June, 1927.

property, brought a suit for cancellation of the resale on the ground that the property had been acquired with joint family funds and could not be retransferred without the consent of all the members. This suit was ultimately compromised on the 8th of July, 1925, and a decree was passed in terms of this compromise to the effect that the property should come back to the families of the vendees. Upon this the plaintiff instituted the present suit for pre-emption, alleging that this was in reality a collusive decree, and the property had in reality been sold for consideration. The findings of the lower appellate court were not satisfactory, and we had to send down certain issues for fresh determination. The findings that are now returned make it quite clear that the resale of the 24th of July, 1924, was a genuine transaction, but there is also the finding that the compromise of the 8th of July, 1925, was "really a sale for consideration in the form of a compromise, and not a genuine compromise." The learned Judge has further believed the oral evidence to the effect that this compromise was entered into on payment of Rs. 250 to the vendors.

His findings therefore amount to this, that it was not merely a compromise of the suit for cancellation brought by the brother of the vendees, but in reality a consideration of Rs. 250 was accepted and the property was transferred to the family of the vendees by the vendors. But it cannot be denied that this was acquired, not by a registered document, but by means of a compromise decree obtained through a court of law.

Under section 11 of the Pre-emption Act a right of pre-emption accrues on the sale of a proprietary interest in land. Section 4, sub-section (10), lays down that a sale means a sale as defined in the Transfer of Property Act of 1882. In section 54 of the Transfer of Property Act a sale is a transfer of ownership in exchange for a price paid or promised or part paid and part promised.

1930

BINDRABAN

v.  
RAJFAT  
SINGH.

1930

BINDRABAN  
v.  
RAJPAT  
SINGH.

Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards can be made only by a registered instrument.

On the finding of the District Judge there is no doubt that this transaction was a transfer of ownership in exchange for a price paid. But the other condition required by the section, that it should be effected by a registered instrument, was wanting. The Transfer of Property Act nowhere speaks of a sale of immovable property of the value of Rs. 100 and upwards as being effected without a registered instrument but by means of a compromise decree. It therefore seems to us that although the transaction was a transfer for price it was not such a transfer as is referred to in section 54 of the Transfer of Property Act. It was therefore not a sale within the meaning of that section.

In a case of genuine compromise a Bench of this Court in *Paras Ram v. Neksai* (1), laid down that a sale which is pre-emptible must be strictly a sale as defined in the Transfer of Property Act, and that a transfer of property effected under a compromise decree of a court cannot be treated as a sale nor pre-empted under the Act. We have pointed out the additional reason that the definition of sale in the Transfer of Property Act requires the existence of a registered document in case of a transfer of property of the value of Rs. 100 and upwards.

We must accordingly hold that the plaintiff has no right to pre-empt this property.

(1) (1927) I.L.R., 50 All., 454.