

Before Sir John Thom, Chief Justice, and Mr. Justice
Ganga Nath

1940
January, 30 SHEOBANDHAN PANDE (PLAINTIFF) *v.* KISHUN PRASAD
PANDE AND OTHERS (DEFENDANTS)*

U. P. Regulation of Sales Act (Local Act XXVI of 1934), section 5—Sale by Collector at his valuation to the decree-holder—“Transfer in execution of a decree”—No suit for pre-emption lies—Agra Pre-emption Act (Local Act XI of 1922), section 6.

A transfer by the Collector to the decree-holder under section 5 of the U. P. Regulation of Sales Act, 1934, is a “transfer in execution of a decree” within the meaning of section 6 of the Agra Pre-emption Act and no suit for pre-emption can lie.

Mr. K. N. Agarwala, for the appellant.

Mr. Shiva Prasad Sinha, for the respondents.

THOM, C.J., and GANGA NATH, J.:—This is a plaintiff’s appeal arising out of a pre-emption suit.

The suit was decreed in the trial court. On appeal the lower appellate court dismissed the suit. The decree of the lower appellate court has been upheld in second appeal in this Court. This appeal is under the Letters Patent.

One important question of law is presented for consideration in this appeal, namely as to whether a co-sharer has a right of pre-emption in the case of a transfer of land under section 5 of the Regulation of Sales Act, XXVI of 1934.

Under the provisions of the Regulation of Sales Act the Collector in the case of the execution of a decree which has been transferred to him in pursuance of a notification 576/IA—93, dated 26th March, 1932, made in virtue of the provisions of section 68 of the Code of Civil Procedure, is empowered to value the land sought to be sold under the decree and to give the decree-holder an option of taking the land at that valuation in satisfaction of his decree. The option is given to the decree-holder under section 4(a) of the Act. Section

*Appeal No. 27 of 1939, under section 10 of the Letters Patent.

5 of the Act is as follows: "If the decree-holder exercises the option mentioned in clause (a) of section 4, the Collector shall transfer to him the agricultural land or the amount of agricultural land determined in accordance with section 3(2), as the case may be, in full satisfaction of the decree."

The defendants are decree-holders and land was transferred to them by the Collector under the provisions of section 5 aforementioned. The plaintiff is a co-sharer and he claims the right of pre-emption under section 11 of the Agra Pre-emption Act.

The plaintiff is not entitled to pre-empt if the sale which was effected by the Collector is a sale held in execution of a decree. Under order XXI, rule 88, of the Code of Civil Procedure the rights of co-sharers to pre-emption are protected in the case of a sale held in execution of a decree. It is open to a co-sharer to bid and if his bid is equal to that of the highest bidder his bid is to be preferred under the provisions of the aforementioned rule. But under section 6 of the Pre-emption Act it is enjoined that no right of pre-emption shall arise in respect of any sale held in execution of a decree of a civil or revenue court. There is a proviso, however, to the section that nothing therein shall affect the provisions of order XXI, rule 88.

Under the provisions of the Code of Civil Procedure and the notification above referred to, where agricultural land is sought to be sold in execution of a decree the Collector becomes the executing authority. The decree is transferred to him for execution. Now up to 1934 when the Regulation of Sales Act was passed there was only one way in which the Collector could direct a sale to be held in execution of a decree, that was sale by auction. In 1934, however, the Regulation of Sales Act was passed. This Act was an Act designed to regulate the sale of agricultural land in execution of civil court decrees against agriculturists. Sections 3, 4 and 5 of the Act provide for a method of sale other

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than sale by auction. Instead of putting the property sought to be sold up for auction at once as he could have done prior to the passing of the Regulation of Sales Act, the Collector is directed to value the property sought to be sold and to give the decree-holder the option of taking the property at that valuation. In other words the Collector is empowered under the Regulation of Sales Act to effect a sale in another manner than by public auction.

Under section 11 of the Agra Pre-emption Act co-sharers are given a right of pre-emption "whenever a co-sharer or petty proprietor sells any proprietary interest in land forming part of any mahal or village in which a right of pre-emption exists, or when any such interest is foreclosed." The sale of the property to the defendants in the present suit by the Collector was not a sale by a co-sharer or petty proprietor, it was a sale by the Collector and section 6 of the Pre-emption Act declares that no right of pre-emption arises in a sale in execution of a decree of a civil or revenue court. The decision of this appeal therefore turns upon the answer to the question as to whether the transfer of the property in suit by the Collector to the defendants under section 5 of the Regulation of Sales Act, XXVI of 1934, was a transfer in execution of a decree. In our judgment it was. The respondents had a decree against an agriculturist; they proposed to sell his land. The execution of the decree was thereupon transferred to the Collector. The Collector became the executing court. Under the provisions of section 5 of the Regulation of Sales Act he effected a sale of the property to the decree-holders. He did not act in his administrative capacity as representing the judgment-debtors, he acted as the executing court carrying out a sale in one of the methods now provided by the legislature in the Regulation of Sales Act. The sale being one in execution of a decree no right of pre-emption arises and the plaintiff's suit must fail.

In the result the appeal is dismissed with costs.