

1881  
August 26.

*Before Mr. Justice Straight and Mr. Justice Duthoit.*

MANNA SINGH (PLAINTIFF) v. RAMADHIN SINGH (DEFENDANT). \*

*Pre-emption—Joint purchase by co-sharer and strangers—Specification of interests taken by purchasers.*

A co-sharer of an estate sold his share to R, who was also a co-sharer in such estate, and to two other persons, who were not co-sharers, but "strangers," selling it to all of them jointly and collectively, for one integral sum as the consideration for the whole. The deed of sale specified that each of the purchasers took a one-third share of the property sold. The co-sharers of the estate were entitled, on the sale by a co-sharer of his share, to the right of pre-emption. Held that such specification could not alter the joint nature of the sale transaction or permit of its being broken up and treated as involving three separate contracts, so as to entitle R, as a co-sharer having an equal right of pre-emption, to resist, so far as one-third of the property was concerned, a claim by another co-sharer to enforce a right of pre-emption in respect of such sale, but R must be regarded as a "stranger" in respect of the whole of the property sold by reason of his having associated himself with "strangers." *Guneshee Lal v. Zaraut Ali* (1) observed on.

THE plaintiff in this suit claimed to enforce a right of pre-emption in respect of a sale under an instrument dated the 11th February, 1880, of four shares in four villages, basing his claim on the *wajib-ul-arz*, which gave co-sharers a right of pre-emption as against "strangers," that is to say, persons who were not co-sharers. From the body of the instrument of sale it appeared that these four shares had been sold to the defendants-vendees for a lump sum of Rs. 500 in manner following; that is to say, "one-third to Ramadhin, one-third to Ramapat, and one-third in equal shares to Shiupal and Madho Singh." The defendants-vendees were all "strangers" except Ramadhin, who was a co-sharer in the villages in question, and thus had a right of pre-emption equal to the plaintiff's right. In giving the plaintiff a decree, the Court of first instance held that the plaintiff had no right of pre-emption as regards the one-third share purchased by the defendant Ramadhin, and accordingly gave the plaintiff a decree for a two-thirds share only of the shares in suit conditional on payment within a certain time of a proportional amount of the purchase-money. On appeal by the plaintiff it was contended on his behalf that, as the

\* Second Appeal, No. 144 of 1881, from a decree of W. Tyrrell, Esq., Judge of Allahabad, dated the 22nd November, 1880, affirming a decree of Babu Promoda Charan Banarji, Munsif of Allahabad, dated the 22nd July, 1880.

(1) N.-W. P. H. C. Rep., 1870, p. 343.

defendant Ramadhin had associated "strangers" with himself in the purchase of the shares in suit, he must be regarded as a stranger, and the plaintiff was entitled to the whole of such shares. The lower appellate Court disallowed this contention, observing as follows:—

"The first plea is based on a ruling of the High Court for the North-Western Provinces in *Guneshee Lal v. Zaraut Ali* (1), but that case is essentially distinguishable from the present case, wherein the specification of the several interests purchased is an integral part of the contract between the parties to the sale on both sides."

The plaintiff appealed to the High Court, again contending that the defendant Ramadhin should be regarded as a stranger, so far as the plaintiff was concerned, by reason of having associated himself with strangers; and that the case cited by the lower appellate Court was not distinguishable from the present case.

Munshi *Ram Prasad* and Babu *Ram Das Chakarbatii*, for the appellant.

Mr. *Colvin*, for the respondent.

The Court (STRAIGHT, J., and DUTHOIT, J.) delivered the following judgments:—

DUTHOIT, J.—The question at issue in this appeal is whether a claim for pre-emption, founded on the terms of a village administration-paper, has or has not been rightly dismissed by the Courts below as regards part of the property conveyed, because one of the part-purchasers was at the time of the sale a co-sharer—the title under which he was so has, it appears, been since defeated—in the estate, and possessed therefore, as regards that part of the property, a right to purchase equal to that of the would-be pre-emptor.

The law regarding the right of pre-emption under a sale to co-sharers associated with strangers has been laid down for these Provinces in *Sheodyal Ram v. Bhyro Ram* (2) and in *Guneshee Lal v. Zaraut Ali* (1).

The former authority does not appear to have been referred to in the lower appellate Court, but the latter was, and was held to be distinguishable, on the ground that in the present case a specification of the shares of the purchasers was part of the transaction,

(1) N.-W. P. H. C. Rep., 1870, p. 343. (2) N.-W. P. S. D. A. Rep., 1860, p. 53.

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whereas in the document with which the decision of this Court of 1870 was concerned there was no such specification.

The record of Special Appeal No. 657 of 1870 has been examined. It contains a translation of the deed of sale then under reference. The only difference, as regards the point in question, between that document and the one now under consideration is that in the deed now before us the specification of the shares of the vendees in the purchased property is stated in the body of the instrument, whereas in the deed which was under consideration in 1870 the specification was contained in a schedule at foot. But as that schedule was referred to in the body of the instrument, and the sale was declared to be "according to the specification contained in the schedule at foot," the schedule clearly became for the purpose under reference part and parcel of the instrument, and that being so, I fail to see how the present case and the case of 1870 are to be distinguished. I would decree the appeal with costs.

STRAIGHT, J.—The contract of sale was a joint one and the consideration joint. The mere mention of the proportion in which the vendees were to take the property cannot alter the nature of the transaction, nor permit of its being broken up and treated as involving three separate contracts. The defendant-respondent Ramadhin, though a co-sharer, having associated strangers with him in his purchase, stands in neither better nor worse position than they do as against a pre-emptor, and cannot avail himself of his privileges under the *wajib-ul-arz*. I concur with my brother Duthoit that this appeal should prevail, and decreeing it with costs I would allow the plaintiff-appellant's claim in its entirety.

*Appeal allowed.*

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