

1880
August 23.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

LAJJA PRASAD AND OTHERS (PLAINTIFFS) v. DEBI PRASAD AND ANOTHER
(DEFENDANTS).*

Pre-emption—Refusal to purchase.

A person having a right of pre-emption does not lose it by refusing to purchase the property at the price at which it is offered to him, because he believes that such price is in excess of the real price, where such belief is entertained and expressed in good faith.

THE plaintiffs in this suit claimed to enforce a right of pre-emption in respect of a four-anna share of a village called Garhia, basing their claim on an agreement recorded in the village administration-paper. This share, together with a house, had been sold by the defendant Debi Prasad to the defendant Muhammad Husain on the 23rd May, 1879. According to the deed of sale the purchase-money of the property was Rs. 599. The plaintiffs alleged that the actual price of the property was not the amount entered in the deed of sale, as Rs. 150 had been returned to the defendant-vendee, and the actual price of the share was Rs. 400, Rs. 50 being the price of the house. They paid Rs. 400 into court, claiming the property for that sum, but expressing their readiness to pay any amount which it might be determined was the actual price of the share. At the hearing of the case the plaintiffs gave evidence that Rs. 150 and the costs of preparing the conveyance and of its registration, Rs. 16, had been returned to the defendant-vendee. The Court of first instance decided that it had not been proved that any sum had been returned to the defendant-vendee, and that the actual price of the property was Rs. 599. It further found that the property had been offered for Rs. 600 to the plaintiffs by the defendant-vendor Debi Prasad, before it had been sold to the defendant-vendee, Muhammad Husain, and the plaintiffs had refused to purchase it at that price on the ground that it was not the actual price, but a fraudulent one. The Court held on this latter finding that the plaintiffs had lost their right of pre-emption in consequence of having refused to take the property at the price at which it had been offered to them, and dismissed the suit.

* Second Appeal, No. 447 of 1880, from a decree of J. W. Quinton, Esq., Commissioner of Jhānsi, dated the 16th December, 1879, affirming a decree of J. Deas, Esq., Assistant Commissioner, dated the 30th September, 1879.

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The decision of the Court on this point was as follows :—“But the evidence of plaintiff’s own witness, Narainji, the patwari, is I consider fatal to plaintiff’s claim. His evidence is that a few days before the sale to Muhammad Husain was effected, Debi Prasad offered the share to Lajja Prasad for Rs. 600, and that Lajja Prasad refused to buy the share at that price, urging that this price was not the real one. That Lajja Prasad did refuse the share on this ground is exceedingly likely, for it is proved that Debi Prasad had verbally agreed to sell the share to Lajja Prasad for Rs. 450, including the house. For some reason or other, whether it was, as I suspect, that plaintiff had not the money, or that Debi Prasad had received a higher offer from Muhammad Husain, the sale-deed was not executed in plaintiff’s favor. Debi Prasad was it seems guilty of a breach of contract with Lajja Prasad for which the latter may claim damages, or owing to which he may sue for performance of the contract. As, however, previous to the sale to Muhammad Husain, plaintiff had been offered the share and house for Rs. 600, which offer plaintiff refused on grounds which are not proved to have existed, plaintiff cannot now claim to purchase at the price of Rs. 600 or Rs. 550 for the share alone. The right of pre-emption is based solely on contract; plaintiff refused to purchase the share for Rs. 600, the price offered by defendant; he is therefore now debarred from purchasing at that price.” On appeal by the plaintiffs the lower appellate Court also decided that the property had been offered to the plaintiffs for Rs. 600, and they had refused to take it at that price, and had consequently lost their right of pre-emption. Its decision on this point was as follows :—“Maintaining that it (the price) was fraudulent and he would sue for pre-emption, he has failed to prove fraud, and has refused the offer at the alleged fraudulent price; consequently he has no cause of action.”

On appeal by the plaintiffs to the High Court it was contended on their behalf that they did not lose their right of pre-emption by refusing to purchase the property at a price which they believed in good faith not to be the actual price.

Munshi Sukh Ram and Lala Lalta Prasad, for the appellants.

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Babu Jogindro Nath Chaudhri and Maulvi Mehdi Hasan, for the respondents.

The judgment of the Court (PEARSON, J., and OLDFIELD, J.,) was delivered by

PEARSON, J.—We are unable to concur in the opinion of the lower Courts that the plaintiffs have lost their right of pre-emption by refusing to purchase the share in question when offered to them at a price which, although it has been held on trial in this suit to be the price really paid by the defendant-respondent Muhammad Husain, they believed to be considerably in excess of the real price. They certainly had some reason for doubting whether the price at which it was offered to them was that at which it was really being sold to him; for the Court of first instance holds it to be proved that the defendant-respondent Debi Prasad had previously agreed to sell the share to the plaintiff Lajja Prasad for Rs. 450; and a good deal of evidence was produced on the part of the plaintiff to prove that Muhammad Husain received back from Debi Prasad the sum of Rs. 166. That evidence has not been accepted as satisfactory; but nevertheless the circumstances do not afford any ground for supposing that the plaintiffs' belief of the amount of the price being Rs. 599 was not entertained and expressed in good faith. The first Court remarks:—"That Lajja Prasad did refuse (the offer) on this ground, *viz.*, that the price was not the real price but a fraudulent one, is exceedingly likely." There can be no doubt that he was anxious to purchase the share, and that he only objected to paying more than the real price. He is therefore, in our opinion, entitled to purchase it at what has been found to be the real price. He was justified in bringing the question as to what was the real amount of the price before a Court of Justice for determination, and it appears that in bringing this suit he declared his readiness to pay the amount which the Court might determine to be the real price.

The view taken by us is in accordance with, and is supported by, the ruling of the late Sudder Court in the case of *Eshri Das v. Bindu Prasad* (1).

(1) N.-W. P. S. D. A. Rep., 1861, vol. i., part ii, p. 892.

As the plaintiffs have failed in their contention that Rs. 599 was not the real price, they must pay all the costs of the defendants in this suit; but in modification of the decree of the lower Courts, we adjudge them the share in question by right of pre-emption and possession of the same, on condition of their depositing Rs. 599 for payment to the vendee in the first Court within a month from the date of the receipt by that Court of our decree.

Appeal allowed.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Oldfield.

RAM PRASAD RAM AND ANOTHER (PLAINTIFFS) v. RAGHUNANDAN RAM AND OTHERS (DEPENDANTS).*

*Money-decree—Decree enforcing hypothecation of immoveable property—
Construction of decree.*

A decree was signed by the Court which made it in two places, at the top of the first page, and at the bottom of the third page. The second signature followed these words:—"Ordered that a decree be given for the plaintiff for the full amount claimed, being principal, together with costs and interest at six per cent. per annum." The fourth page contained the following order:—"The claim for Rs. 10,614-11-0 be decreed by enforcement of hypothecation and auction-sale of talúqa M: it is further decreed that the defendants do pay the plaintiff Rs. 1,002-0-6 costs of the suit." *Per* OLDFIELD, J. (STUART, C. J., dissenting), on the construction of such decree, that the order contained in the fourth page was part of such decree, notwithstanding that such page did not bear the Court's signature, as the Court's signature at the top of the page covered the whole document, and such decree was not a mere money-decree but one enforcing the hypothecation of immoveable property.

Per STUART, C. J.—That, construing such decree with reference to the plaint and judgment in the suit in which it was made, and not with reference to the Court's signatures, such decree was not a mere money-decree but one enforcing the hypothecation of immoveable property.

THE plaintiffs in this suit claimed to have an order dated the 5th April, 1879, set aside, and to have a three-anna three-pie share of talúqa Mandyar "protected" from sale in the execution of a decree dated the 18th April, 1877. It appeared that Jaisri Singh and Sheobarat Singh, defendants Nos. 2 and 3 in this suit, had assigned by sale to Raghunandan Ram, defendant No. 1 in this suit, a lease of certain immoveable property, cove-

* First Appeal, No. 33 of 1880; from a decree of Maulvi Mahmud Bakhsh, Additional Subordinate Judge of Gházipur, dated the 9th December, 1879. Reported under the special orders of the Hon'ble the Chief Justice.

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