

*Before Mr. Justice Ashworth and Mr. Justice Muhammad Raza.*

1925  
November,  
35.

ABDUL RAHMAN (DEFENDANT NO. 1-APPELLANT) *v.*  
FATEH NARAIN DAS (PLAINTIFF) KARIM BAKHSI  
(DEFENDANT NO. 2-RESPONDENTS.)\*

*Civil Procedure Code, section 65—Pre-emption—Auction-purchaser's right to pre-empt, accrual of.*

*Held*, that in view of the provisions of section 65 of the Code of Civil Procedure an auction-purchaser can say that he became a co-sharer not from the date of the confirmation of the sale in his favour but from the date of the auction sale and he is, therefore, entitled to notice under section 10 of the Oudh Laws Act in respect of any sales effected after the date of the auction. [8 O.C., 202; 10 O.C., 273 and I.L.R., 40 Cal., 89, referred to.]

*Mr. Zahur Ahmad*, for the appellant.

*Mr. Rajeshwari Prasad*, for the respondent No. 1.

ASHWORTH and RAZA, JJ. :—This second civil appeal arises out of a pre-emption suit. The plaintiff is Fateh Narain Das, who is respondent No. 1 in this appeal. The claim for pre-emption is in respect of a sale effected by a sale-deed executed on the 11th of August, 1922, and registered on the 16th of August, 1922, of a certain zamindari share by one Baqar, defendant No. 2 in the lower court but no party to this appeal, in favour of Abdul Rahman, defendant No. 1 and appellant. The plaintiff, Fateh Narain Das, based his right to pre-empt on the fact that he became a co-sharer in the village on the 27th of September, 1921, by reason of some share in the village being knocked down to him at an auction sale held by a court, which date was before the sale

\* Second Civil Appeal No. 66 of 1925, against the decree of Ganga Shankar, Subordinate Judge of Unao, dated the 1st of October, 1924, modifying the decree of Mahabir Prasad, Munsif of Safipur (at Unao), dated the 28th of January, 1924.

out of which the right of pre-emption is alleged to arise: The purchase by Fateh Narain Das at the auction sale was not confirmed until the 19th of December, 1922. It was the contention of the defendant No. 1, and the appellant in this appeal, that until confirmation took place, Fateh Narain Das had not acquired the position of co-sharer. The only question, therefore, which arises in this appeal is whether property knocked down to an auction-purchaser is to be deemed to vest in that auction-purchaser from the date of the auction or from the date of the confirmation of sale. The lower courts have relied upon section 65 of the Civil Procedure Code, which runs as follows:—

“ Where immovable property is sold in execution of a decree and such sale has become absolute the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.”

The appellant's counsel, however, relies on section 10 of the Oudh Laws Act (XVIII of 1876) read with the previous sections and section 13. This section so read in effect provides that when any person proposes to sell any property he shall give notice to persons having a right to pre-empt. If he fails to do this then any such person may bring a suit to enforce his right to pre-emption, after the transfer has taken place. He argues that even if an auction-purchaser has a right to claim on confirmation of auction sale that the property vested in him from the date of the auction, this cannot place on a proposing vendor an obligation to give notice to a person who at the time was not owner. We hold that this

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argument cannot prevail. The language of section 65 is a bar to any such argument. The auction-purchaser is entitled when bringing a suit for pre-emption under section 13 of the Oudh Laws Act to say :—

“ I was a co-sharer not from the date of confirmation of the auction sale in my favour but from the date of that auction sale ”.

If the enactment of section 65 acts harshly on a vendor by reason of the retrospective effect that it gives to a sale-certificate prepared after confirmation of a sale, then the remedy is one for the Legislature. The courts are bound to give effect to section 65 as it stands. We, however, are not disposed to hold that section 65 can be deemed to be unfair to the vendor in such a case. It was held in *Lala Gaya Parshad v. Misra Sidh Gopal and others* (1) and again in *Zalim Singh and another v. Kallo Singh* (2) that an unconfirmed auction sale did not vest in the auction-purchaser an interest or legal title which he could assert against strangers to the sale. A distinction was drawn in these cases between the judgment-debtor whose property was being sold by the auction sale (and persons claiming through him) on the one hand and third parties on the other. It is doubtful whether this distinction was rightly drawn even before the enactment of section 65 of the present Civil Procedure Code. In the Privy Council case *Bhawani Kuwar v. Mathura Prasad Singh* (3), their Lordships of the Privy Council held, in respect of a sale on the basis of a mortgage, that the mortgagee who himself purchased became owner from the date of the sale and not from the subsequent date of confirmation, and it was pointed out that it was impossible to

(1) 8 O.C., 202.

(2) 10 O.C., 273.

(3) I.L.R., 40 Cal., 89 (102).

hold that as against certain persons the sale was effected from the date of the auction, and against other persons that it was effected from the date of confirmation. Any way these rulings, as pointed out by the lower appellate court, are of no authority now since the enactment of section 65. Whether the auction-purchaser is, until confirmation of the auction sale, the legal owner or merely a person who is in the process of becoming an owner, there is little hardship in requiring a vendor to give him notice. Notice must be given to him because, whatever his position, the law provides that from the date of confirmation of the sale he shall be deemed to have been owner from the date of the sale. We hold that the appellant's appeal was rightly rejected by the lower appellate court and dismiss the appeal with costs.

*Appeal dismissed.*

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*Before Mr. Justice Wazir Hasan and Mr. Justice  
Muhammad Raza.*

BASHIR AHMAD (PLAINTIFF-APPELLANT) *v.* MUSAMMAT  
ZUBAIDA KHATUN AND AKHTAR HUSAIN  
(DEFENDANTS-RESPONDENTS).\*

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*Pre-emption—Gift in lieu of dower by a Muhammadan, whether gave rise to a right of pre-emption—hiba-bil-ewaz and sale-deed, difference between—Interpretation of documents, rules of—Muhammadan law—hiba-bil-ewaz, consideration for.*

Where a Muhammadan husband in lieu of his wife's unpaid dower transferred his under-proprietary share in a certain village in her favour and the words of transfer used in the document were *hiba wa bakhsh diya* (made a gift and

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\* Second Civil Appeal No. 516 of 1924, against the decree of E. M. Nanavutty, District Judge of Fyzabad, dated the 15th of September, 1924, setting aside the decree of Humayun Mirza, Additional Subordinate Judge of Sultanpur, dated the 12th of March, 1924.