

Before Mr. Justice Ashworth and Mr. Justice Gokaran Nath Misra.

1925
November,
24.

JAGANNATH PRASAD AND ANOTHER (DEFENDANTS-APPELLANTS) *v.* CHANDI PRASAD (PLAINTIFF-RESPONDENT).*

Pre-emption—Offer to a person entitled to pre-empt, requirements of.

Held, that the offer to a person entitled to pre-empt, in order to prevent his exercising that right, must be an offer specifying the person to whom and the price at which it was proposed to sell the property. [1 O.C., 254; 5 O.C., 395; 10 O.C., 25 and 22 O.C., 323, followed.]

Messrs. *Hyder Husain* and *A. Rauf*, for the appellants.

Mr. Wasi Husan, holding brief of *Mr. Ali Zaheer*, for the respondent.

ASHWORTH and MISRA, JJ.:—This second civil appeal arises out of a pre-emption suit brought by the plaintiff-respondent, Chandi Prasad, against Jagannath Prasad and Baijnath Prasad, sons of Durga Prasad the vendee, who are appellants in this Court. Ajodhya Prasad vendor was also a defendant. He is no party to this appeal. The Subordinate Judge of Mohanlalganj dismissed the suit on the ground that the plaintiff was proved to have acquiesced in the sale of the property by the vendor to the vendee. That finding was based on the following findings of fact. He found that the vendee had called the plaintiff and asked him if he wished to purchase. This was at the moment when the transaction of purchase by the vendee was on the point of conclusion with one Sheo Prasad. The price was mentioned to the plaintiff and the plaintiff made some suggestion about this price

* Second Civil Appeal No. 298 of 1925, against the decree of C. H. B. Kendall, District Judge of Lucknow, dated the 13th of May, 1925, reversing decree of Muhammad Abdul Haq, Subordinate Judge of Mohanlalganj (Lucknow), dated the 24th of November, 1924.

being under-stated in the sale-deed, so that the price of the property might not be raised. The plaintiff expressed his inability to make the purchase himself for want of funds. These findings were based on the evidence of a witness for the plaintiff Parmeshwari Din, and also on the evidence of the patwari, a witness for the defendant-vendee. There was evidence given also by Sheo Prasad. The trial court attached no value to his testimony. It may be mentioned here that the trial court has not expressed any finding as to the status of the Sheo Prasad mentioned above, but apart from Sheo Prasad's own evidence we have the evidence of the patwari (Ajodhya Prasad, D. W. 3) that Sheo Prasad was concluding the sale with the vendee on behalf of the vendor. It is admitted that this Sheo Prasad had not been made an agent by any deed in writing, but the law does not require that an agent should be appointed by a deed in writing for the purpose of negotiating a sale.

The District Judge of Lucknow on appeal upheld the finding of the lower court that the respondent was given a chance of buying the property, but adds the words "though not by the vendor himself". The District Judge did not express any dissent from the findings of fact by the trial court. We consider that the District Judge must be deemed to have upheld these findings of fact. The District Judge, however, allowed the appeal merely on a question of law. He has stated that no doctrine of acquiescence can be invoked so as to obviate the statutory necessity of a written notice under section 10 of the Oudh Laws Act. In support of this view he gives no decision of any court, but merely states that, if the doctrine of acquiescence were to be invoked, the result would be "that estoppel would defeat the express provision of an act".

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We consider that it is now too late in the day to call in question the applicability of the rule of estoppel by acquiescence in cases of pre-emption in the province of Oudh. That rule has been given effect to ever since 1882 up to the present date. We may refer to *Select Decision No. 83* decided in 1882, *Select Case No. 305* decided in 1896, 1 *Oudh Cases* 254 decided in 1898, 5 *Oudh Cases* 395 decided in 1902, 10 *Oudh Cases* 257 decided in 1907, and lastly *Hanuman Singh v. Aditya Prasad* (1) decided in 1919. This last case was a Bench ruling to which one of us was a party. The law was considered very fully in it. It was held that the offer to a person entitled to pre-empt in order to prevent his exercising that right must be an offer specifying the person to whom and the price at which it was proposed to sell the property. In the present case the findings of fact of the lower courts show that both these conditions were fulfilled. The vendee Durga Prasad was the person who actually communicated the offer and the price was fully understood by the plaintiff. Whether or no it is necessary, in order to invoke the doctrine of acquiescence that the person making the offer should be the vendor and not merely the vendee, is a question that, it is not necessary for us to determine in this case. In this case the agent of the vendor was present when the offer was made to the plaintiff and was a party to the offer. Whether or no the vendee alone could make such an offer in the absence of the vendor or his agent is, therefore, immaterial.

We, therefore, allow the appeal, set aside the decree of the lower appellate court, and restore that of the first court with costs throughout to the appellants.

Appeal allowed.