APPELLATE CIVIL.

Before Mr. Wazir Hasan, Acting Chief Judge, and Mr. Justice Gokaran Nath Misra.

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January 17.

RAM NARAIN (PLAINTIFF-APPELLANT) v. SHANKAR DAT (DEFENDANT-RESPONDENT).*

Pre-emption—Oudh Laws Act (XVIII *of* 1876), *section* 10—*Notice given orally to son of pre-emptor who formed a joint Hindu family with his father, effect of—Right of pre-emption is a personal right conferred on co-sharers.*

Where it was proved that the vendor had before the execution of the sale-deed offered the property for purchase to the son of the pre-emptor, who formed a joint Hindu family with his father and managed the family property during his father's absence, and that the son had refused to buy it but there was no proof that the son had any special authority to refuse such an offer on behalf of the father it cannot be held that the father was estopped from enforcing his right of pre-emption. The right of pre-emption is a personal right in the sense that it is conferred on a co-sharer and the father being a recorded co-sharer was entitled to enforce his claim for pre-emption in his own right. *Maryam Begam* v. *Tika* (1) and *Bhagwat Singh* v. *Saiyid Nazir Husain* (2), referred to.

Mr. *Radha Krishna*, holding brief of Mr. *A. P. Sen* and Mr. *Sheo Gobind Tripathi*, for the appellant.

Messrs. *M. Wasim* and *Naimullah*, for the respondent.

HASAN, A. C. J., and MISRA, J. :—This is the plaintiff's appeal from the decree of the Subordinate Judge of Rae Bareli, dated the 8th of September, 1927. The appellant's suit has been dismissed by the decree under appeal.

On the 28th of January, 1926, a 5 annas 4 pies share situate in village Pindaria, pargana Inhauna, in the district of Rae Bareli, was purchased by Sheo Dar-Ishan defendant (since deceased and now represented by his son, Shankar, Dat, the sole respondent in this ap-

*First Civil Appeal No. 145 of 1927, against the decree of Damodar Rao Kelkar, Subordinate Judge of Rae Bareli, dated the 8th of September, 1927, dismissing the plaintiff's suit.

(1) (1898) 1 O. C., 254. (2) (1902) 5 O. C., 395.

peal) ostensibly for a sum of Rs. 12,000. By means of the suit out of which this appeal has arisen Ram Narain claimed to enforce his right of pre-emption in respect of the sale of the 28th of January, 1926. The defence gave rise to several issues. One of the issues was "Is the plaintiff estopped from suing as alleged?" In answer to this issue the finding of the court below is in the affirmative and on the basis of that finding alone the suit has been dismissed. The decision of the learned Subordinate Judge on every other issue in the case has been accepted before us by the parties and it is agreed that if the finding of the court below on the issue relating to estoppel is reversed by us, the plaintiff should be given a decree for pre-emption on payment of Rs. 12,000.

The law of pre-emption, as it is administered in the Province of Oudh, is contained in chapter II, consisting of ten sections (sections 6 to 15) of Oudh Laws Act, 1876. By virtue of the provisions of section 13 a person entitled to a right of pre-emption may bring a suit to enforce such right on the ground amongst others that no due notice was given as required by section 10. It is admitted on both sides that the appellant is a person entitled to a right of pre-emption. It is also admitted that no due notice as required by section 10 was given in this case. On these facts, therefore, the appellant is *prima facie* entitled to a decree but it is said that he is estopped from enforcing his right of pre-emption on the ground that one of the vendors. Surajpal Singh, asked Mohan Lal, son of the appellant, as to whether he would purchase the property. Mohan Lal in answer declined to do so. On these premises being established, according to the learned Subordinate Judge, the plea of estoppel must be given effect to.

It is not necessary to decide the somewhat vexed question as to whether a plea of estoppel of the nature

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put forward in this case is entertainable at all, having regard to the requirement of the statutory law that there must be a notice as to the proposal of sale given according to the formalities prescribed by that law. A single Judge of the late Court of the Judicial Commissioner of Oudh decided in *Maryam Begam* v. *Tika* (1) that oral evidence of notice prescribed in section 10 of the Oudh Laws Act, 1876, is inadmissible. In the case of *Bhagwat Singh* v. *Saiyid Nazir Husain* (2) decided by Mr. (now Sir EDWARD) CHAMIER it was held that in a suit for pre-emption although notice in writing is not given by the vendor the plaintiff may be estopped from claiming pre-emption if it is proved that the property was offered to him for a certain price, that he refused to purchase at that price and that he expressly consented to the purchase of the property by the vendee.

The facts are as follows and they were not disputed before us at the hearing of the arguments in this appeal. The appellant and his son, Mohan Lal, constitute a joint Hindu family. The family is possessed of certain zamindari share in the village of Pindaria, in which the share in suit is also situate. The appellant generally lives in Calcutta where he carries on a printing press. At times he comes to his village. While the appellant is absent Mohan Lal naturally carries on the household work and the management of the zamindari share in the village. Mohan Lal is 25 years of age. Early in the year 1925 the appellant executed a formal power-of-attorney in favour of Mohan Lal and on its destruction by fire a fresh power was executed in August, 1926. Neither a copy of the former power nor the original or a copy of the latter has been produced in this case and it has never been suggested on behalf of the respondent that Mohan Lal had received under any of these powers express authority to act on behalf of his father in matters

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like the one involved in the present case. But it is argued that on the facts stated above Mohan Lal must be deemed to be a manager of the joint Hindu family, that his conduct in refusing to buy the property fell within the scope of usual authority of a manager and was therefore binding on the plaintiff.

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We cannot accede to this argument. In the first place, having regard to the evidence on the record and particularly of Mohan Lal, who alone gives some details as to the work he does on behalf of his father, we are unable to accept the contention that Mohan Lal must be treated to have been occupying the position of a manager of the family at the time when the offer is said to have been made to him. The sale in question was made by a registered deed of the 28th of January, 1926, and according to the evidence of Surajpal Singh, one of the vendors, the sale was settled a month before the execution of the deed. Surajpal Singh's version is that after the sale had been settled with the respondent he offered the property for purchase to Mohan Lal. He took Mohan Lal to be an agent of his father. Mohan Lal in his evidence denied the alleged offer. The learned Judge in the trial Court has accepted the evidence of Surajpal Singh and of Sheo Adhar as against the evidence of Mohan Lal as to the offer made and the refusal by Mohan Lal and we have done the same. Mohan Lal was examined as a witness in this case on the 7th of September, 1927. He states that he is the plaintiff's agent for 1½ years. This is obviously a reference to the power-of-attorney executed in August, 1926, by the appellant in favour of Mohan Lal. As to the terms of the authority we have already said that they are not proved. As to his work on behalf of his father outside the scope of the written authority, all he tells is that he has been doing his father's work for the last two years since the death

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of his grandmother and that during her lifetime she looked after his father's work with the aid of an agent. He also said that his father comes home at times.

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On the evidence, therefore, we are not satisfied that Mohan Lal occupies the position of a manager of the family in whose favour an agency by implication may be deemed to have been created by his father. But even if it be granted that he is the manager of the property of the family, from that alone we are unable to draw the conclusion that the son is the agent of the father for the purpose of refusing an offer of a sale of property to which the father may wish to lay claim in his personal right by bringing a suit for pre-emption founded on the statutory provisions of the Oudh Laws Act. Clearly a right of pre-emption is a personal right in the sense that it is conferred on a co-sharer. It must be conceded that both, father and son, being members of a joint family are co-sharers if any of them is recorded as such in the revenue registers of the village. That the appellant is so recorded is admitted. This being so, it follows that each is entitled to enforce his claim for pre-emption in his own right.

We accordingly allow this appeal, set aside the decree of the lower court and decree the plaintiff's suit on condition that he deposits in the court below the sum of Rs. 12,000 within three months from the date of the decree of this Court. In case of default the suit shall stand dismissed with costs in both the courts. If the deposit is made as hereby directed the plaintiff will be entitled to his costs in both the courts and he would be permitted to deduct the amount of costs from the sum of Rs. 12,000 in making the required deposit.

Appeal allowed.