

objection also with costs. A fresh decree under order XXXIV, rule 2 of the Code of Civil Procedure shall be prepared in this Court in terms of the decree of the lower court allowing a period of six months to the plaintiffs from the date of the decree of this Court.

*Appeal dismissed.*

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PRIVY COUNCIL.

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RAJA. PATESHWARI PARTAB NARAIN SINGH, SINEO DECEASED (PLAINTIFF) *v.* SITA RAM AND OTHERS (DEFENDANT) AND CONNECTED APPEALS.\*

[On Appeal from the Chief Court of Oudh.]

P. C. Appeals nos. 29, 30, 31 of 1928.

Oudh Appeals nos. 18, 19, and 20 of 1927.

*Pre-emption—Waiver of right of pre-emption—Offer to sell declined—Absence of notice of intended sale—“Village community”—Oudh Laws Act (XVIII of 1876) sections 7, 9 and 10.*

In 1872 the Government granted to a single grantee a large tract of waste land which was later constituted a separate village. On the grantee's death the village passed to his devisees who resided in England. Through their local agent they offered the village for sale divided into blocks at fixed prices. The appellant having purchased a block and registered the conveyance claimed to pre-empt under the Oudh Laws Act 1876 section 9, other blocks which had been purchased by the respondents severally under agreements completed at a later date. It appeared that the appellant knowing the fixed prices had definitely told the vendors' agent that he did not wish to buy any other block, and that he had acquiesced in an oral agreement already made for the sale of some of the blocks to one of the respondents.

*Held* that if the appellant had a right to pre-empt he had waived it by his conduct, even though no formal notice of an intention to sell was given under section 10 of the Act. *Bhagwat Singh v. Saiyad Nazir Husain* (1) followed in, *Bank of Upper India v. Munshi Alopi Prasad* (2) and *Hanuman Singh v. Adiya Prasad* (3) approved.

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\*Present: Lord BLANESBURGH, Lord TOMLIN, Lord THANKERTON, Sir GEORGE LOWNDES and Sir BRNO MITTER.

(1) (1902) 5 Oudh Cases, 395. (2) (1907) 10 Oudh Cases, 257.

(3) (1919) 22 Oudh Cases, 323.

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*Quere* (1) whether the devisees of the grantee constituted a "village community" within the meaning of the Oudh Laws Act, 1876, section 7; (2) whether a registered conveyance entitles a purchaser to pre-empt land the subject of a sale already completed but unregistered.

Decree of the Chief Court affirmed.

P. C. CONSOLIDATED APPEALS (Nos. 29, 30, 31 of 1928) from three decrees of the Chief Court of Oudh (November 20, 1928) affirming two decrees and reversing one decree, of the Subordinate Judge of Gonda.

A village in Oudh, called Cookenagar, was offered for sale by its proprietors at fixed prices for the several blocks into which they had divided. The appellant acquired one block by a sale-deed executed and registered on the 9th of June, 1924. He brought three suits against the respondents claiming that under the Oudh Laws Act, 1876, section 9, he had the right to pre-empt other blocks which had been purchased by the respondents respectively; he pleaded that he had not been given notice of the sales as required by section 10 of the Act.

The facts appear from the judgment of the Judicial Committee.

The Subordinate Judge dismissed two of the suits on the ground that the sales to the defendants therein were made before the 9th of June, 1924, the date when the sale to the plaintiff was completed and registered, and that consequently the plaintiff was not entitled to notice of them; he decreed the third suit, finding that the sale there was after that date.

Upon appeals to the High Court it was held that the suits could not be maintained, as there was no right of pre-emption in the village. The learned Judges (STUART, C. J. and MOHAMMAD RAZA, J.) were of opinion that no custom of pre-emption was proved to exist in the village, and that the presumption enacted in section 7 of the Act

being conditional upon there being a village community did not arise, since in their view there was no village community in Cookenagar either in 1876 or in 1924.

1929. June 4, 6, 7. *Dunne, K. C. and Jopling*, for the appellant. By section 7 of the Act a custom of pre-emption is to be presumed to exist in the village. The appellant had a right to pre-empt under section 9 of the Act both as a co-sharer in the mahal, and as a member of the village community; and he was entitled to notice of the sales under section 10. It is not material that there were agreements to sell before the registration of the sale to the appellant, as by section 54 of the Transfer of Property Act a contract of sale creates no interest in the land. The expression "village community" in section 7 is not used in any technical sense; where there are a number of co-sharers there is a village community: *Rahim-ud-din v. Rewal* (1), *Munnu Lal v. Muhammad Ismail* (2). It is not material that some or all of the co-sharers resided out of India.

*DeGruyther, K. C. and Parikh*, for the respondents in appeals Nos. 29 and 30; *Dube*, for respondent in appeal No. 31. There was no proof of a custom of pre-emption in Cookenagar, and the village was not a "village community" so as to raise a presumption of the existence of the custom under section 7 of the Act: *Drigbijai v. Court of Wards* (3), *Narindra Bahadur Singh v. Balkaran Singh* (4), *Ram Dayal v. Chaudhri Mohammad Abdul Basit* (5), *Rahim-ud-din v. Rewal* (1), applied to pre-emption in the Punjab where the tenures and the relevant legislation are different from in Oudh. Even if a custom of pre-emption is to be presumed under section 7 the presumption is rebutted as in the circumstances there could be no such custom attaching in this village. But

(1) (1903) I. L. R., 30 Cal., 635; (2) (1904) I. L. R., 26 All., 574; L. R., 30 I. A., 39. L. R., 31 I. A., 212.

(3) (1901) 5 Oudh Cases, 266. (4) (1904) 7 Oudh Cases, 275.

(5) (1908) 12 Oudh Cases, 1.

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even if the plaintiff had a right of pre-emption, he waived that right as he definitely declined to purchase more than the one block [Reference was made to the cases referred to in the judgment.]

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*Dunne, K. C.*, in reply. By section 6 the plaintiff had a right to acquire "in preference to all other persons", that includes persons who have by contract a right to call for a conveyance. The evidence did not show a definite waiver of the right to pre-empt.

July 5. The judgment of their Lordships was delivered by SIR GEORGE LOWNDES :—These three consolidated appeals raise a somewhat unusual question under the law of pre-emption in Oudh. The facts are as follows :—

In December, 1872, the Secretary of State made a grant of a large tract of waste land in the Gonda district to one William Cooke. The land was described in the deed of grant as situated in the village of Agya, but under subsequent settlement proceedings it seems to have been constituted a separate "village" known as Cooke-nagar Grant. The word "village" in this connection, however, denotes little (if anything) more than a revenue unit. In 1924, when the transactions which led to this litigation took place, the original grantee was dead, and the estate was vested under the provisions of his will in ten persons living in England, and was managed on their behalf in India by a Mr. Stern. The owners being desirous of disposing of the property, it was divided up into a number of blocks, which were offered for sale locally by Mr. Stern. Block No. 19 was purchased by the appellant, the Raja of Basti; blocks Nos. 7 and 9 by Dargahi (now deceased and represented by Sita Ram and Madho) and Mata Prasad; the respondents in two of the appeals; and blocks Nos. 10—13, 15 and 20 by Raja Mohammad Mumtaz Ali, the respondent in the third appeal. It is

not now disputed that the conveyance of block No. 19 to the appellant was executed and registered on the 9th of June, 1924, before any of the other sales were formally completed, though the conveyance of block No. 7 to Dargahi and Mata Prasad was executed on the same day, but at a later hour. The sale to Raja Mohammad Mumtaz Ali was not completed till the 18th of June, 1924, and the second sale to Dargahi and Mata Prasad (block No. 9) not till the 21st of July following.

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Under these circumstances the appellant claimed to pre-empt the other blocks, and filed three suits in the Court of the Subordinate Judge of Gonda against their several purchasers to enforce his claims. The two suits against Dargahi and Mata Prasad were tried together and one judgment was delivered in both, the Subordinate Judge holding that the appellant's claim in respect of block No. 7 was not established, but that his claim in respect of block No. 9 was. The one suit was therefore dismissed, and in the other a decree for pre-emption was made upon the usual terms. The third suit against Raja Mohammad Mumtaz Ali was tried by the same Judge, but separately, and was also dismissed. Appeals were filed by the unsuccessful parties in each of the three cases to the Chief Court of Oudh. The appeals were apparently heard together, and were decided by one judgment, the result of which was that the appellant, the Raja of Basti, was defeated in all three cases, his two appeals being dismissed, and the appeal of the respondent purchasers of block No. 9 being allowed.

The appellant before this Board has maintained his right to pre-emption in all the three cases under the provisions of Chapter II of the Oudh Laws Act, XVIII of 1876.

On the argument of these appeals a number of questions have been raised of considerable complexity and

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depending upon the intimate construction of this somewhat abstruse enactment. Their Lordships, however, are satisfied that the appellant must fail in each of them on the threshold of the Act, having regard to certain findings of fact in which both the courts in India have concurred.

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The sales in question were all carried out on behalf of the vendors by Mr. Stern. The blocks were in the market for some time. They were clearly delineated upon separate plans, and separate *khasras* and *jamabandis* were prepared for each. The Subordinate Judge held that the appellant had procured a list of all the blocks, containing the prices; that he knew that they were all in the market and could be had for these prices, but that he definitely refused to purchase any but block No. 19, which was adjacent to his own estate. The appellate court came in effect to the same conclusion. They held that the appellant told Mr. Stern that he wished to purchase block No. 19 only and that he did not wish to purchase any other block. The oral agreement for sale with Raja Mohammad Mumtaz Ali was entered into some time prior to the agreement with the appellant, but both courts held that when he refused to purchase any of the other blocks he was aware of the agreement with Raja Mohammad Mumtaz Ali and acquiesced in it.

Upon this state of facts their Lordships are clearly of opinion that, assuming that the prior completed purchase by the appellant would, under other circumstances, have given him the right of pre-emption in respect of the blocks in suit, he must be taken by his conduct to have waived this right, and that it would be inequitable to allow him now to re-assert it. This principle has been recognized in previous cases by the Oudh Courts: see *Bhagwat Singh v. Syed Nazir Husain* (1), *Bank of Upper India v. Munshi Alopi Prasad* (2), and *Hanuman*

(1) (1902) 5 Oudh Cases, 395.

(2) (1907) 10 Oudh Cases, 257.

*Singh v. Adiya Prasad* (1), and it has been applied to some extent at all events by the judgment of the Subordinate Judge in the present case.

Having come to this conclusion, their Lordships will only touch briefly upon certain other questions which have formed the subject of argument before them.

The decision of the Chief Court ultimately turned upon the question whether the appellant was by reason of his purchase a member of the village community of Cookenagar Grant, inasmuch as under section 7 of the Oudh Act the right of pre-emption is only to be presumed to exist in "village communities." This expression is not defined in the Act, and no evidence was given in any of the suits as to the existence of a "village community" in Cookenagar Grant. It was, however, contended for the appellant that, upon the death of Cooke, who was till then the sole owner of the village, the ten persons living in England who were his devisees became a village community within the meaning of the Act, and that as soon as the appellant purchased block No. 19 he became a member of that community. It may be that, as appears to have been held in other cases by the Oudh courts, only persons having an interest in the village lands should be deemed to be members of the community, though their Lordships are not prepared in the present case to affirm the correctness of this proposition; but it by no means follows from this that Cooke's devisees merely by reason of an interest in the land so acquired should be assumed to constitute a village community which was not shown to exist apart from themselves.

Another question which was the subject of considerable discussion before this Board turned upon the possible competition between the rights acquired by a contract for sale and those attaching under the Oudh Act to a completed conveyance. It was found by the courts in India

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that the agreement for sale of Raja Mohammad Mumtaz Ali's plots was prior in date to the agreement for sale of block No. 19 to the appellant, but that the registered sale deed of the appellant preceded by some ten days the completion of Raja Mohammad Mumtaz Ali's purchase. Both courts were of opinion that under these circumstances the appellant had no right of pre-emption as against Raja Mohammad Mumtaz Ali. It may be that in such a case there is a direct conflict between the statutory rights attached under chapter III of the Transfer of Property Act to an agreement for sale, and the right of pre-emption conferred by the Oudh Laws Act, and that this question may need further consideration at some future time. Their Lordships do not think it necessary to come to any conclusion upon it in these appeals.

The matter of notice under section 10 of the Act was also discussed. It was admitted that no formal notice of his proposal to sell any of the plots in suit was given by Mr. Stern, but in their Lordships' view this cannot help the appellant. His refusal to purchase any of the other plots, and his acquiescence in the sale to Raja Mohammad Mumtaz Ali may well have induced Mr. Stern to believe that the statutory notice was unnecessary, and if it had been given it seems clear that the present suits would have been barred by section 11.

For the reasons already stated, their Lordships are of opinion that the present appeals must fail, and they will humbly advise His Majesty that they should be dismissed. The appellant must pay the costs of both sets of the respondents.

Solicitor for appellants: *Barrow, Rogers and Nevill.*

Solicitors for respondents: *H. S. L. Polak and T. L. Wilson & Co.*