the provisions of Order 9, Rule 9 from instituting a second suit on the same cause of action.

In the case before me the fact that the second suit was allowed to be amended into a suit claiming partition makes no difference in the legal position. If the heirs of a Burman Buddhist are joint owners in the estate of the ancestor entitled to joint possession, then no matter how the suits are framed, they would always be entitled to file a second suit as as the right continues till the joint ownership is determined.

I therefore hold that the present suit is barred by virtue of the provisions of Order 9, Rule 9 of the Civil Procedure Code. The suit is therefore dismissed with costs.

APPELLATE CIVIL.

Before Sir Guy Rutledge, Kt., K.C., Chief Justice and Mr. Justice Brown.

1927
Aug. 19.

REDDIAR AND SAN CHEIN
v.
SECRETARY OF STATE FOR INDIA IN COUNCIL AND THE SPECIAL COLLECTOR OF RANGOON.*

Land Acquisition Act (I of 1894), s. 23 (1)—"Market-value" of land, meaning of —No difference between English and Indian principle of awarding compensation.

Held, that there is no difference between the English and Indian principle of determining compensation to be awarded for land compulsorily acquired. The Court takes into consideration the market-value of the land which is the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of the land There is no intention to compensate for any attachment by reason of sentiment or family association.

Kailas Chandra Mitra v. *Secretary of State for India in Council*, 17 C.L.J. 34, *Narasingh Das* v. *Secretary of State for India in Council*, 52 I.A. 133—*referred to.*

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* Civil First Appeals Nos. 149 and 155 of 1926.

1927

REDDIAR AND SAN CHEIN v. SECRETARY OF STATE FOR INDIA IN COUNCIL AND THE SPECIAL COLLECTOR OF RANGOON.

Young—for Appellants.

Gaunt (Assistant Government Advocate)—for Respondents.

RUTLEDGE, C.J., AND BROWN, J.—These are two appeals from the awards of the District Judge of Insein in respect of lands acquired under notification, dated the 10th January, 1923.

The lands are situated outside the city boundaries between the new Kyaikasan Race Course and Kanbe Village. They are undeveloped garden lands and the most advantageous way in which they could be developed is admittedly as building sites when the growth of the city beyond its present boundaries might create a demand for those properties.

Mr. Young, the learned advocate for the appellants, has argued that Lord Buckmaster's judgment in *Narsingh Dass* v. *Secretary of State for India in Council* (1), has made a revolutionary change in the law of land acquisition. The passage relied on is :—

"Now, the principle upon which valuation of property compulsorily acquired should be measured has been repeatedly laid down before by this Board and by the House of Lords. To use the words to be found in *Fraser* v. *City of Fraserville* (2), 'it is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities, excluding any advantage due to the carrying out of the scheme for the purpose for which the property is compulsorily acquired'."

This is the broad principle of the English Law of Compensation as laid down first in the Lands Clauses Consolidation Act of 1845. The words of

(1) (1924) 52 I.A. 133 at p. 135.
(2) [1917] A.C. 187 at p. 194.

the Indian Land Acquisition Act, 1894, section 23 (1), run as follows :—

"In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration :

first, the market-value of the land at the date of the publication of the notification under section 4, sub-section (1) ; * * * * * *."

The rest of the section is unnecessary for our present purpose of comparison.

It is perfectly clear that Lord Buckmaster had no intention, nor had he any power, to repeal or modify the words of the Indian Act which governed the case before him. But his ruling is meant to set at rest the question, which has often been the subject of discussion, whether, in fact, there is any difference between the English principle and the Indian, and his answer to that question is that there is none.

An eminent authority, Sir Lawrence Jenkins, when Chief Justice of Bengal, observed in *Kailas Chandra Mitra* v. *Secretary of State for India in Council* (1) :—

"The market-value of land may be roughly described as the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of the land."

The value of land to an owner can only be tested by what he would get for it if he was willing to sell and not compelled to sell ; and there is no intention, either under the English or the Indian Act, to compensate him for any attachment by reason of sentiment or family association.

We are consequently of opinion that this ruling does not in anyway affect the primary consideration in determining the amount of compensation, namely,

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(1) (1910) 17 C.L.J. 34 at p. 35.

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REDDIAR AND SAN CHEIN v. SECRETARY OF STATE FOR INDIA IN COUNCIL AND THE SPECIAL COLLECTOR OF RANGOON.

RUTLEDGE, C.J., AND BROWN, J.

the market-value of the land at the date of the publication of the notification.

We may observe that the learned District Judge *has carefully and exhaustively dealt with the evidence* in this case and stated the conclusions at which he arrived with great clearness, and with most of his findings we are in agreement. He has admitted and discussed sales which took place after the notification, as he has explained, because there was some evidence led to suggest that an agreement for sale in respect of the same land had been arrived at before the date of the notification, and he has also dealt with the evidence of a certain number of offers. No doubt, proof of *bonâ fide* offers have to be considered by a Court, but the probative value of offers has, for good reasons in this country, been held to be very low indeed, for the offers alleged in Land Acquisition proceedings are scarcely ever *bonâ fide*. They can be easily arranged without any loss or inconvenience to either party, and individuals, respectable in their various relations of life, have no compunction in lending themselves to a fictitious transaction which may assist a friend in extracting more than his due from Government or a public body at no cost to themselves.

[After discussing the evidence, their Lordships dismissed the first appeal and allowed an increase of award in the second case but without costs.]