

APPELLATE CIVIL.

Before Mr. Justice LeRoussignol and Mr. Justice Harrison.

CHIRAGH DIN AND GANDA SINGH (DEFENDANTS)—Appellants,

versus

SERAJ DIN (PLAINTIFF)
IMAM DIN, ETC. (DEFENDANTS) } Respondents.

Civil Appeal No. 3009 of 1918.

Jurisdiction—value of pre-emption suit for purposes of—where compensation is found to be payable by the plaintiff-pre-emptor on equitable grounds in addition to the price.

In the present pre-emption suit the Munsif decreed the claim on payment of Rs. 60, the price paid by the vendee, plus Rs. 71-2-0, representing compensation for improvements effected by the vendee since the sale. An appeal from this decree was heard by the Senior Subordinate Judge who would have had no jurisdiction if the value of the suit had been Rs. 60 plus Rs. 71-2-0.

Held, that compensation found to be payable by the plaintiff-pre-emptor on equitable grounds, and not as a part of the price paid by the vendee, should not be taken into consideration in determining the value of a suit in a pre-emption case for the purposes of jurisdiction, and that consequently the Senior Subordinate Judge had jurisdiction to hear the appeal in the present case.

Dharam Chand v. Giridhari Lal (1), *Hyat v. Sant Ram* (2) and *Muhammad Khan v. Ashak Muhammad Khan* (3), followed.

Muhammad Afzal Khan v. Nand Lal (4), and *Abdul Rahman v. Charagh Din* (5), distinguished.

Second appeal from the decree of Rai Sahib Lala Ganya Ram, Soni, Senior Subordinate Judge, 1st Class, Lahore, dated the 13th May 1918, affirming that of S. Muhammad Shah, Munsif, 1st Class, Kasur, district Lahore, dated the 19th March 1918, decreeing plaintiffs' claim.

DIWAN MEHR CHAND, for Appellants.

MUHAMMAD HUSSAIN, for Respondents.

(1) 38 P. L. R. 1802.

(2) 20 P. R. 1894.

(3) 106 P. R. 1595.

(4) 16 P. R. 1908 (F. B.).

(5) 19 P. R. 1908 (F. B.).

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The judgment of the Court was delivered by—

LEROSSIGNOL J.—The first question in this second appeal is whether the appeal from the Munsif lay to the Court of the Senior Subordinate Judge. In his plaint the plaintiff alleged that the property in suit belonged to him and Imam Din jointly, that it was sold by Imam Din to Chiragh Din, defendant, for Rs. 60, and that the plaintiff claimed one-half in his own right and the other half as a pre-emptor on payment of Rs. 30. The Munsif found that the plaintiff had no share in the property but was entitled to pre-empt the whole on payment of Rs. 60 plus Rs. 71-2-0 representing compensation for improvements effected by the vendee since the sale. If the value of the original suit was Rs. 60 the Senior Subordinate Judge had jurisdiction to hear the appeal, but if the value of the original suit was Rs. 60, the price of the property, plus Rs. 71-2-0, the compensation payable for improvements, the Senior Subordinate Judge had no jurisdiction to hear the appeal which lay to the District Court. We have been referred to *Muhammad Afzal Khan v. Nand Lal* (1) but that does not afford much help, for all that it lays down is that the Munsif is not competent to pass a decree in a suit exceeding the limits of his pecuniary jurisdiction.

In *Abdur Rahman v. Charagh Din* (2) it is laid down that in a suit for possession of a house the value of the improvements effected by defendants must be taken into consideration in determining the value of the suit, but in the body of the judgment of that case it is stated that cases relating to suits for pre-emption have only an indirect bearing on the point in issue.

In *Dharam Chand v. Girdhari Lal* (3) it was held that the value of the suit for the purposes of jurisdiction was the value of the property which it was sought to pre-empt and that value was not affected because the defendant claimed on equitable grounds compensation for improvements.

In *Hyat v. Sant Ram* (4) it was held that compensation for improvements was not to be taken into account in determining the value of the suit, and in *Muhammad Khan v. Ashak Muhammad Khan* (5) it was

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(1) 16 P. R. 1908 (F. B.).

(3) 33 P. L. R. 1902.

(2) 19 P. R. 1908 (F. B.).

(4) 20 P. R. 1894.

(5) 106 P. R. 1895.

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laid down that the question of jurisdiction had to be determined with reference to the claim made and not to the decision upon the claim.

From the foregoing it appears to us that any compensation found to be payable by the plaintiff-pre-emptor to the vendee on equitable grounds and not as a part of the price paid by the vendee is not to be taken into consideration in determining the value of a suit in a pre-emption case. The only apparent ground on which the inclusion of the amount paid as compensation can be justified in determining the valuation of the suit is that the plaintiff should pay court fee on the value of the property he seeks possession of. On the other hand, his claim is merely to be substituted for the vendee in respect of the property in the condition in which it stood at the time of the sale. He does not pray for possession of the improvements effected since the sale nor is he invariably bound to take over those improvements. Indeed the vendee may prefer to remove the improvements effected by him, and in some cases he will be allowed to do so whilst in others he may be forced to forego all claim to them. For these reasons we think the correct view is that compensation found to be equitably due to the vendee is not to be taken into calculation for the determination of the value of the suit, and on this finding we hold that the Senior Subordinate Judge had jurisdiction to hear the appeal.

The only other point argued before us was that the Subordinate Judge was not correct in his finding that the plaintiff's property and the property sold had a common entrance from the street, and it is urged that the plan on the record is not correct. We are not, however, at this late stage prepared to allow the contention that the plan is incorrect, for its correctness was never challenged in the Courts below, and from that plan we find that the only entrance to the area in dispute is through the plaintiff's property. Consequently the Senior Subordinate Judge is correct in his finding that the plaintiff's property and the property in dispute have a common entrance from the street.

For these reasons we dismiss the appeal with costs.

A. N. C.

Appeal dismissed.