

APPELLATE CIVIL

Before Mr. Justice LeRossignol and Mr. Justice Harrison.

MUHAMMAD AKRAM KHAN (PLAINTIFF)—
Appellant
versus

1923

Jan. 31.

MUHAMMAD AZIM KHAN AND OTHERS (DEFENDANTS)—Respondents.

Civil Appeal No. 2591 of 1919.

Pre-emption—on ground of being a co-sharer in the property sold, plaintiff having acquired a portion under a decree for pre-emption subsequent to the date of the sale in dispute—Punjab Pre-emption Act, I of 1913, section 16, firstly.

The plaintiff in this case sued for pre-emption in respect of the sale of a portion of an undivided holding situate in Hazro which was effected on the 9th November 1917, on the ground of his being a co-sharer. The sale of the other portion of the holding was dated the 14th May 1917, and on that sale the plaintiff had brought a suit to pre-empt and obtained a decree in May 1918. The question was whether by reason of this decree the title of the plaintiff must be referred back to the date of the sale, *viz.* the 14th May 1917, and whether he was, therefore, a co-sharer in the undivided holding on the 9th November 1917, the date of the sale now in dispute.

Held, that a successful pre-emptor is vested with the rights of the vendee whom he dislodges, not from the date of the sale, but from the date on which he enforces his rights, *i.e.* from the date on which he satisfies the conditions of his decree and brings it into operation. A suit to pre-empt on the ground of possession of other property is open only to persons who at the time of sale have an established title in that property.

Hakam Singh v. Indar (1), disapproved.

Held consequently, that on the 9th November 1917, the plaintiff was not a co-sharer in the property sold, and his suit had been rightly dismissed.

Second appeal from the decree of P. J. Rust, Esquire, District Judge, Attock, at Campbellpur, dated the 26th May 1919, affirming that of Mehta Lakh Raj, Munsif, 1st Class, Campbellpur, dated the 31st March 1919, dismissing plaintiff's suit.

DALIP SINGH, for D. C. RALLI, for Appellant.

M. S. BHAGAT, for Respondents.

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The judgment of the Court was delivered by—

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LE ROSSIGNOL J.—The plaintiff's suit to pre-empt some land in *Mohalla Urtak* of Hazro has been dismissed by the Courts below. The plaintiff described the property as village immoveable property and based his claim to pre-empt on the ground that he was a collateral of the vendor. On the objection of the defendants that the site was an urban immoveable property the plaintiff alleged that he was entitled to pre-empt as a co-sharer. The Court below found that the land is an urban immoveable property and has dismissed the plaintiff's suit on the ground that as a fact the land in suit is not a part of an undivided holding and, therefore, plaintiff's claim to succeed as a co-sharer in an undivided holding must fail. The Court below arrived at this finding on the strength of a supposed statement by the plaintiff that the land in suit had been partitioned off from the original undivided holding, but here the learned District Judge appears to have committed a mistake, for no such statement by the plaintiff appears to be on the record.

The question then remains whether plaintiff at the time of the sale in respect of which he claims to pre-empt was a co-sharer in the undivided holding. The date of the sale of the land in dispute is the 9th November 1917. The sale of the other portion of the undivided area was dated 14th May 1917 and on that sale the plaintiff brought a suit to pre-empt and obtained a decree in May 1918. A consideration of the aforementioned dates will show that on the 9th November 1917 the plaintiff in this case was not a co-sharer in the undivided estate and the question for decision is whether by reason of his decree of 1918 his title in the joint undivided estate must be referred back to the 14th May 1917. On his behalf it is urged that the right to pre-empt is a right to be substituted for the vendee. This is no doubt incontestable, but the further question arises from what date the right of the vendee passes to the person who is substituted for him. The appellant relies on *Hakam Singh v. Indar* (1)

which does indeed support his contention, but the grounds upon which that decision reposes do not, we think with all respect, justify the conclusion arrived at. In our opinion a successful pre-emptor is vested with the rights of the vendee whom he dislodges not from the date of the sale but from the date on which he enforces his right, i.e. from the date on which he satisfies the conditions of his decree and brings it into operation. No doubt, he is substituted for the vendee in all the rights that were transferred by the sale, but it seems to us unreasonable to conclude that the process of substitution takes place on any date prior to the satisfaction by the pre-emptor of the conditions on which his decree has been granted to him. Any other conclusion will greatly increase the difficulties of persons desiring to dispose of their property by sale, for they would have to enquire regarding the existence not only of ostensible potential pre-emptors but would also have to enquire into the history of contiguous estates.

In our opinion a suit to pre-empt on the ground of possession of other property is open only to persons who at the time of sale have an established title in that property.

For these reasons we dismiss this appeal with costs.

C. H. O.

Appeal dismissed.

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