

## APPELLATE CIVIL.

Before Sir Shadi Lal, Chief Justice and Mr. Justice Bhide.

GODHA RAM AND OTHERS (PLAINTIFFS)

Appellants

versus

SUDH SINGH AND OTHERS (DEFENDANTS)

Respondents.

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June 9.

Civil Appeal No. 2332 of 1924.

*Indian Registration Act, XVI of 1908, section 28—Inclusion in a sale deed of a small fraction of property elsewhere, for purpose of getting registration there—whether sale void, as fraud on law of registration—Intention to sell the small fraction—onus probandi.*

In a suit for pre-emption with respect to land situated at mauza Garah Tahal Singh, tahsil Mailsi, district Multan, it appeared that according to the sale-deed 1/64th share of a house situated at Multan was also sold along with the land. The defendants pleaded, *inter alia*, that the share in the house was really never intended to be sold and that it was included in the deed only with the object of getting the deed registered at Multan; that the inclusion of the fractional share of the house at Multan being a fraud on the law of registration rendered the sale invalid and hence no suit for pre-emption was maintainable.

Held, that the test for determining whether the inclusion of the small share of the house at Multan rendered the sale invalid was whether it was actually *intended* to be transferred. If the parties did intend to transfer it, the sale would be valid, although the motive for the inclusion of the property in the deed was merely to secure the registration at Multan.

*Harendra Lal Roy v. Haridasi Debi* (1), relied upon.

Held further, that as defendants had failed to prove conclusively that it was not intended to transfer the share in the house at Multan, the sale was valid and the suit for pre-emption competent.

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*First appeal from the decree of Lala Devi Dayal Dhawan, Senior Subordinate Judge, Multan, dated the 30th April 1924, dismissing the Plaintiffs' suit.*

FAQIR CHAND and CHANDRA GUPTA, for Appellants.

HAR GOPAL and NANWA MAL, for Respondents.

#### JUDGMENT.

BRIDE J.

BRIDE J.—This appeal arises out of a pre-emption suit with respect to 426 *Kanals* 2 *Marlas* of land situated at *Mauza* Garha Tahal Singh, *Tahsil* Mailsi, in the Multan District. According to the sale-deed, 1/64th share in a house situated at Multan was also sold along with the land. One of the pleas of the defendants was that this share in the house was really never intended to be sold, and that it was included in the deed only with the object of getting the deed registered at Multan, instead of at Mailsi where it would have been registrable in the ordinary course according to law if the land alone had been sold. They pleaded that the inclusion of this small fractional share of the house at Multan, being a fraud on the law of registration, rendered the sale invalid and hence no suit for pre-emption was maintainable. The learned Senior Subordinate Judge upheld this plea and dismissed the suit without going into the other issues arising in the case. From this decision, the plaintiff has appealed.

The sole point for decision in appeal is whether the learned Senior Subordinate Judge was right in holding the sale to be invalid. The law on the subject seems clear enough. According to *Harendra Lal Roy v. Haridasi Debi* (1), which is the leading case on the subject the test for determining whether

the inclusion of the 1/64th share in the house at Multan rendered the sale invalid would appear to be whether it was actually intended to be transferred. If the parties did intend to transfer it, the sale would be valid, although the motive for the inclusion of this property in the deed was merely to secure registration of the deed at Multan. The point for determination, therefore, is whether the parties to the deed did, as a fact, intend to transfer the 1/64th share in the house as cited in the deed.

The learned Senior Subordinate Judge has come to the conclusion that the share in the house was not intended to be transferred on the ground that the share sold was a very small fraction, the vendees did not live at Multan and possession was not taken. He also relied upon the statements of the vendor and the vendees in Court, which were to the effect that the share in the house was never intended to be sold and that it was included in the deed fictitiously merely with a view to secure registration of the deed at Multan. But these facts are by no means conclusive. The statements of the vendor and the vendees in Court are of no value as they are obviously colluding to defeat the rights of the pre-emptor. As regards the other facts, the fractional share sold was no doubt small and of little practical utility; but it does not necessarily follow that at the time the deed was executed the parties had no intention at all of transferring the share and contemplated fraud. The house did belong to the vendor and there was no bar to his selling any share in it, however small. The present case is distinguishable in this respect from *Harendra Lal Roy v. Haridasi Debi* (1), wherein the property supposed to have been sold was

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non-existent. It is possible that the vendor was advised that he could secure registration of the deed at Multan by including a small share of the house-property at Multan and did so with that object but without intending any fraud.

The fact that a separate price, *viz.*, Rs. 50, was fixed for the share in the house is significant in this connection. When the land was resold subsequently, this sum was excluded. If there was no intention at all to transfer the share in the house, there could be no necessity for fixing a separate price for that share.

The defendants are setting up a plea against their own solemn recitals in the deed and such a plea cannot be accepted unless it is established in a conclusive manner. When two constructions of an instrument are possible, the law favours the construction which will make it valid. The facts relied upon by respondents are not necessarily inconsistent with the existence of an intention to transfer the share in the house at the time when the deed was executed. The plea of fraud was probably set up in Court only when the parties came to know of the law on the subject.

I accordingly hold that the sale of the land in dispute has not been proved to be invalid. On this finding the appeal must be accepted and the case remanded to the trial Court under Order XLI, rule 23, Civil Procedure Code, for decision of the remaining issues. Stamp on appeal to be refunded. Costs to follow final decision.

SHADI LAL C.J.

SIR SHADI LAL C.J.—I concur.

A. N. C.

*Appeal accepted.*  
*Case remanded.*