

PRIVY COUNCIL.

*Before Viscount Sumner, Lord Shaw, Lord Carson, Lord
Blanesburgh and Lord Atkin.*

RIKHI RAM AND ANOTHER (DEFENDANTS)

versus

DHANPAT RAI AND ANOTHER (PLAINTIFFS).

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May 8.

Privy Council Appeal No 32 of 1927.

(High Court, Lahore, Case No. 1743 of 1920.)

*Pre-emption—Occupancy Right—Landlord's Claim to
Pre-empt—Previous Suit by all Landlords—Compromise
signed by representative landlords—Sale of Proprietary
Rights to Vendees—Merger of Occupancy Right—Exclusion
of Right of Pre-emption.*

In 1917 tenants of lands in a village sold their occupancy rights to the first appellant who in fact purchased as to a half interest on behalf of three other persons. The present suit was brought in 1919 by two of the 276 co-landlords of the village, against the first appellant and his co-purchasers, to pre-empt, on the ground that the latter were not co-sharers in the village. In 1918 the whole of the co-landlords, including the plaintiffs, had brought a suit against the defendants to set aside the sale. That suit having been dismissed on appeal to the Collector, and an appeal to the Commissioner having been filed, 32 of the co-landlords (not including the present plaintiffs) signed a compromise deed by which the appeal was withdrawn and, in consideration of a sum which was applied to purposes of the community, the proprietary right in the land was sold to the defendants. The sale was sanctioned by the revenue officer, a decree made in terms of the compromise and mutation of names effected. The High Court decreed the pre-emption suit holding that it was not barred by limitation because there had been concealed fraud within Indian Limitation Act, 1908, section 18.

Held, without deciding the question of limitation, that the plaintiffs were precluded from pre-empting the occupancy rights since those rights had merged in the proprietary rights by virtue of the compromise decree. The plaintiffs had not denied that they were bound by the compromise

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although not signed by them, and as the signatories appeared to be representative landlords the decision of the Board in *Idris v. Skinner* (1), was an authority that they were bound by it.

Appeal (No. 32 of 1927) from a decree of the High Court (March 9, 1924) reversing a decree of the Senior Subordinate Judge of Karnal (June 30, 1920).

The suit was brought in October 1919 by the plaintiffs-respondents to pre-empt the occupancy rights in certain village lands, which had been sold by the tenants in August 1917 nominally to the first defendant-appellant, but as was contended (and conceded in this appeal) to him jointly with the second appellant and other vendees, who also were defendants.

The defendants pleaded, so far as material to this report, that the suit was barred by limitation, that the sale had been confirmed, and the occupancy right had merged in the proprietary rights by a compromise made in May, 1919, upon which a decree had been made.

The facts appear from the judgment of the Judicial Committee.

The right of a tenant to alienate his holding, and the right of a landlord to pre-empt, are governed by the Punjab Tenancy Act, 1887, sections 53, 57 and 60.

The Subordinate Judge, after recording verbal and documentary evidence, dismissed the suit.

The High Court reversed the decision. The learned Judges (Harrison and Scott-Smith JJ.) were

of opinion that the suit was not barred by limitation as in their view there had been a concealed fraud within the meaning of section 18 of the Indian Limitation Act, 1908; and that though there had been a merger of the occupancy right before the suit, it did not affect the right to pre-empt.

UPJOHN, K.C., and DUBE, for the appellants.

The suit was barred by limitation under the Punjab Pre-emption Act, 1913, section 30, and the Indian Limitation Act, 1908, Schedule I, Article 10. To bring section 18 of the latter Act into operation the onus was upon the plaintiffs to show that by means of fraud they had been kept from knowledge of their rights. Seeing that they failed to give evidence that onus was not discharged. The evidence showed that the fact of the sale to the defendants was common knowledge and known to the plaintiffs. But in any case the suit cannot be maintained because the plaintiffs are estopped by the compromise decree; further, the occupancy rights were merged in the proprietary rights before the suit as a result of the compromise. The plaintiffs have never contended that the compromise was not binding upon them; they could not do so having regard to the decision of the Board in *Idris v. Skinner* (1).

DUNNE K. C. and WALLACH, for the respondents.

The defendants contended unsuccessfully in both Courts that the sale was to the first appellant alone. There was therefore a concealed fraud. The onus was upon the defendants to show when the plaintiffs first knew the true facts. *Rahimbhoy Habibbhoy v. Turner* (2). That decision of the Board has been applied in a pre-emption suit: *Sukh Lal v. Madhuri*

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(1) 82 P.R. 1919 (P.C.) (2) (1892) I.L.R. 17 Bom. 341; L.R. 20 I.A. 1.

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Prasad (1). The defendants did not discharge that onus, and the suit is not barred by limitation. The plaintiffs were not precluded from selling by the compromise. If all the proprietary rights in the land had been parted with the suit could not be maintained, but the true effect of the compromise was that the transfer was only of the fractional interests of the landlords who signed the deed. A sale of the whole proprietary interest was outside the scope of the suit.

UPJOHN K. C. replied.

The judgment of their Lordships was delivered by :—

LORD SHAW—This is an appeal from the decree of the High Court of Judicature at Lahore, dated the 7th March, 1924, which reverses a decree of the Senior Subordinate Judge at Karnal, dated the 30th June, 1920.

The plaintiffs-respondents claim to pre-empt the sale of occupancy rights in certain lands in the Kaithal Mundi, and the suit was accordingly brought by them against the defendants-appellants and others, who are vendees. There is no question of proprietary rights in the case. Defendants 6 to 10, being five occupancy tenants, sold their occupancy rights to the appellant Rikhi Ram for Rs. 3,650. The sale challenged was by deed, dated the 25th August, 1917, and the conveyance was registered on the 27th August. Shortly after the purchase he sold one-half, as after mentioned, to defendants Bhiku Mal, Partapa Mal and Miri Mal. The suit was brought on the 7th October, 1919.

Judged accordingly by the dates alone, this suit for pre-emption, brought more than two years after

the sale, would be excluded by the Indian Limitation Act (IX of 1908), schedule I, article 10. It being admitted that at, or immediately after, the date of the sale, Rikhi Ram, the purchaser, entered into possession, and began building operations, the same result would follow under section 30, being the Limitation Section of Act I of the Punjab Acts, 1913.

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The subject of the sale was certain land, which was in the nature of waste land, suitable for building, and in or in the immediate neighbourhood of Kaithal Mundi. The point as to whether it is within or outside of the Mundi was the subject of the first issue framed by the Court, and on it differing decisions were given in the Courts below. The point, however, is of no real importance to the decision now given on the grounds about to be stated.

Notwithstanding the dates, the interval between which would signify that limitation applied, the issue in the action on limitation is founded upon section 18 of the Limitation Act, the section which provides that where the applicant has been kept from the knowledge of his right by means of fraud, or where any document necessary to establish his right has been fraudulently concealed, then the time for instituting a suit is to be reckoned "from the time when the fraud first became known to the person injuriously affected." The Senior Subordinate Judge on this issue held that there was no fraud in the case, nor was there any fraudulent concealment. The judgment on this point was reversed by the High Court; while, on the question of the time when the alleged fraud came to the knowledge of the plaintiffs, although the plaintiffs themselves did not appear as witnesses, the High Court also reversed the judgment of the Senior Subordinate Judge.

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It might be necessary to scrutinise in careful detail the reasoning and conclusions of the High Court judgment on these topics; but in their Lordships' opinion the case can be quite well disposed of, apart from limitation, and on another ground which to their Lordships seems to be fundamental to the whole position and fatal to the rights of the respondents.

This ground will appear from a brief statement of the events which occurred between the date of the purchase of the occupancy rights by Rikhi Ram in August, 1917, and the institution of the suit in October 1919. It is now admitted that Rikhi Ram's purchase was for himself and others. Rikhi Ram explains that he wanted to add the names of the others in the sale-deed, but they wanted separate documents from him. These documents they obtained; he sold a one-half share of his occupancy rights in the lands to the defendants Bhiku Mal, Partapa Mal and Miri Mal, and they began to build shops. This was itself a public fact. It was followed, however, by an objection by the landlords of the village (the land being communal land), who prayed for cancellation by reason of disconformity to the requirements of section 53 of the Punjab Tenancy Act. This application was made on the 25th March, 1918. The applicants expressly took the point that "there are other vendees (than Rikhi Ram) who were non-agriculturists" and had no right in the *Shamilat*, and that, therefore, the sale of occupancy rights should be cancelled.

Then on the 9th September, 1918, a suit was filed on behalf of all the landlords of the village in the Court of the Assistant Collector of Karnal against the appellant Rikhi Ram and his co-sharers. The importance of that suit is that all the 276 landlords

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of the village, including the present plaintiffs-respondents, were parties to it. One of the statements was that the defendants other than Rikhi Ram were "in fact co-sharers with him," and it was claimed that the sale was accordingly null and void. That suit was decreed by the Assistant Collector in January, 1919. On appeal to the Collector, however, he found as follows: "Accordingly I accept the appeal and find that the sale of occupancy rights is valid." This happened upon the 10th March, 1919.

A further appeal was then made to the Commissioner of the Ambala Division, and then a compromise among all the parties was effected. The deed of compromise is dated the 31st May, 1919:—

" ' We, the *Biswedars* of Patti Gadar, Kaithal, withdraw our claim, and give up conducting this appeal.' This case was brought on the strength of proprietary rights in respect of the land in dispute. The Collector, District Karnal, granted permission to sell these proprietary rights on an application filed by a large number of persons of Patti Gadar, Kaithal. Now we, the proprietors of the Patti, of our own accord, in consideration of the said permission to alienate the proprietary rights, having compromised with the defendants-vendees-respondents, have received Rs. 1,300 in cash of the Government coin."

This deed further narrates that:—

" The defendants vendees-respondents have contributed as under:—

Rikhi Ram, son of Jai Ram Das, to the extent of half-share, Rs. 650.

Bhiku Mal and Partapa Mal, sons of Anant Ram, to the extent of one-fourth share, Rs. 325.

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Miri Mal, son of Piari Lal, to the extent of one-fourth share, Rs. 325."

And concludes with an agreement containing *inter alia* the provision:—

"Now we (the proprietors of the Patti) have no concern with the previous proprietary rights in respect of the land in dispute. We, the proprietors, whose signatures and thumb-marks are borne on the deed of compromise, make ourselves responsible for payment of damages and costs to the above-named persons, in case if any one brings any sort of suit in respect of the said land."

* * * * *

"We, the proprietors of the Patti, also pray that mutation entry in respect of the proprietary rights may be made in favour of the respondents-vendees in the revenue papers according to this compromise."

The Revenue Officer sanctioned the sale in favour of the appellants. The Commissioner passed a decree in terms of the compromise on the 2nd June, 1919. The consideration was a sum of Rs. 1 300. That consideration was paid, and has been devoted to public and communal purposes for the benefit of the Muudi as a whole.

Further, it was part of the compromise that mutation should take place, and this was duly effected. Extracts from the mutation register are produced, and the reports of the Patwari, dated the 11th, and that of the Tahsildar of the 24th September, 1919, are contained in the final column of the register which identifies the property and enumerates the owners, recording the fact that Rikhi Ram was owner of one-half, Miri Mal owner of one-fourth, and Bhiku

Mal and Partapa Mal owners of the remaining fourth between them. That final column is as follows :—

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“ According to mutation No. 357, Rikhi Ram, occupancy tenant, has been shown as *malik kabza*. Therefore, the name of the said occupancy tenant may be removed. The entry is made in the mutation register, and the papers are submitted for necessary orders. The report is entered in the village *Roznamcha* at No. 19, dated the 11th September, 1919.

Signature of

MUNI LAL,

Patwari, deh.”

“ Rikhi Ram was the occupancy tenant of Nos. 1127/1, 1127/2 and 1127/3. Rikhi Ram, etc., have purchased the proprietary rights in respect of the said numbers, *vide* mutation No. 357.

“ Now Rikhi Ram has become the owner of $\frac{1}{2}$ -share. He cannot now be shown as occupancy tenant. Therefore his name as occupancy tenant may be removed.

“ Dated the 24th September, 1919.

Signature of :—

SHEIKH AZIZ-UL-RAHMAN,

Tahsildar.”

It will thus be seen that the occupancy rights have been consolidated, or rather, merged in the ownership rights ; that these belong to the appellants, and that the respondents were themselves parties to the suit in the course of which this compromise arrangement was come to, followed by the decree and mutation proceedings above cited.

The only argument that appears possible in these circumstances is that the respondents personally did

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not sign the compromise, they being two out of 276 landlords and parties to the suit. On the other hand, a number of apparently representative landlords did sign. It is to be observed, however, that no such plea is made. If it had been, it would have been sufficiently answered by the authorities such as *Idris v. Skinner* (1)—a strong case, some of the villagers having been minors and their representatives claiming that they were not bound by a transaction carried through in the communal interests with the approval of the Court by two of the villagers. In the present case, however, the compromise is not challenged; it has neither been disclaimed nor impeached: it stands. Nor is any challenge made of the judgment which followed it; that also stands. This being so, it appears to their Lordships to be beyond argument that the respondents can in this suit have no right or title to prefer a claim for pre-emption to the lands upon which the buildings were erected, a claim which, if sustained, might destroy the entire value and validity of the settlement and decree. Whether the case be viewed under the heading of *res judicata* or of estoppel, or of no title and interest to sue, the result would be the same; the respondents' claim in this litigation is excluded. Valuable consideration has been paid for the transaction under which the respondents' rights, including, of course, any claim of pre-emption, have disappeared. On this ground the judgment of the High Court must be reversed.

It thus becomes unnecessary to deal with the points arising under the Limitation Act. But their Lordships desire it to be fully understood that the Board is in no way committed, either to the opinions

(1) 82 P. R. 1919 (P. C.).

expressed by the High Court that there was in this case any fraud either practised or concealed, or to the views expressed by the High Court on the questions of limitation and the points as to onus treated by the learned Judges.

In the course of the discussion it was stated that the respondents had seized and were in occupation of the lands and buildings thereon. It may well be that in respect thereof a claim to mesne profits has emerged to the appellants. But their Lordships are not on this appeal in a position to deal with this matter and they must leave the appellants to make in India such claim with respect thereto as they may be advised.

Their Lordships will humbly advise His Majesty that the decree appealed from be reversed, that the decree of the Senior Subordinate Judge at Karnal, dated the 30th June, 1920, be restored, and that the appellants be found entitled to costs.

A. M. T.

Solicitor for appellants, *H. S. L. Polak.*

Solicitor for respondents 1 and 2, *Ranken Ford and Chester.*

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