APPELLATE CIVIL.

Before Bhide and Tapp JJ.

1931

Jan. 27.

LABH SINGH (PLAINTIFF) Appellant

versus

TAJ DIN AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 2953 of 1925.

Punjab Pre-emption Act, I of 1913, sections 15, 16, fifthly—Sale—two separate deeds—in respect of portions of the same property—Suit for pre-emption—duty of Court—to decide whether there were two separate transactions or only one, so manipulated in order to defeat the right of the pre-emptor.

A part of a house, *viz.* a *kotha* with the adjoining open space was sold to the defendant-vendee on the 11th March, 1923. A week later the rest of the house was sold by another sale deed to the same vendee. Plaintiff's house adjoined the house but was not contiguous to the *kotha* and open space, while the property which formed the subject matter of the second sale was contiguous to the plaintiff's house. The lower Court, holding that by reason of the first sale the plaintiff's right of pre-emption was not superior to that of the vendee in regard to the second sale, dismissed the plaintiff's suit for pre-emption. Plaintiff urged that there was really only one sale-transaction and that it was clothed in the form of two transactions merely to defeat his right of pre-emption.

Held, that the question whether there were two transactions or not is one of fact, the Court having to arrive in all such cases at the real nature of the transaction upon all available material, irrespective of the form in which the transaction is outwardly clothed.

Jagdish v. *Man Singh* (1), followed.

Held further, that, as in the circumstances of this case there was in reality only one sale-transaction, the two sale deeds must be treated as parts of one and the same transaction and, as such, subject to plaintiff's right of pre-emption as if the whole property had been sold by one deed.

(1) 100 P. R. 1895 (F.B.).

1931

LABH SINGH v. TAJ DIN.

First appeal from the decree of Mehta *Dwarka Nath, Senior Subordinate Judge, Lahore, dated the 22nd June 1925, dismissing the plaintiff's suit.*

JAGAN NATH AGGARWAL, PARTAP SINGH, FAKIR CHAND, for DIWAN MEHR CHAND, for Appellant.

BARKAT ALI and MUHAMMAD AMIN, for Respondents.

BHIDE J. BHIDE J.—This appeal arises out of a pre-emption suit with respect to certain house property situated in *Mohalla* Sathan, *Kucha* Wanwala, in Lahore city.

The material facts are briefly as follows :—

A part of the house, *viz.* a *kotha* together with the adjoining open space, was sold for Rs. 500 by a sale deed, dated 11th March 1923. A week later the rest of the house was sold by another sale deed dated 18th March 1923 for a sum of Rs. 6,000. Plaintiff's house adjoins the house but is *not contiguous* to the *kotha* and the open space sold on the 11th March 1923 and it was admitted before us that if this sale had stood alone the plaintiff would have had no right of pre-emption with respect to it. The property which formed the subject matter of the second sale is contiguous to the plaintiff's house, but as the vendee had already acquired a *kotha* (together with some open space) which is also contiguous to that property, on the 11th March 1923, plaintiff's right was held to be not superior to that of the vendee with respect to the subject matter of the second sale. The result was that plaintiff was held to have no right to pre-empt the property in dispute and his suit was dismissed on this finding.

The main contention urged on behalf of the plaintiff was that there was really only one sale

1931

LABH SINGH v. TAJ DIN.

BHIDE J.

transaction and it was clothed in the form of two transactions merely to defeat the plaintiff's right of pre-emption. The trial Court has held that there was no evidence to show that there was only one transaction. The learned counsel for the appellant concedes that there is no direct evidence on the point but contends that such direct evidence could scarcely be expected and that the very circumstances in which the sale deeds were executed are sufficient to prove that they were part of one and the same transaction.

On behalf of the respondents on the other hand it was contended that there were as a matter of fact two distinct transactions of sale and that even if this were not so, the vendee was entitled to defeat the plaintiffs right of pre-emption by any legitimate means, as he did in the present case.

A number of authorities were referred to but it will serve no useful purpose to discuss them as the question whether there were two transactions or not is one of fact and has to be determined on the circumstances of this case. The Court has to arrive in all such cases at the real nature of the transaction upon all available material, irrespective of the form in which it is outwardly clothed [cf. *Jagdish* v. *Man Singh* (1)]. We have, therefore, to see whether the parties really entered into two separate transactions of sale or whether there was only one transaction and it was given the appearance of two separate sales merely to defeat the plaintiff's right of pre-emption as alleged by him.

When the vendor and vendee collude to disguise a transaction in order to deceive a third party, it is naturally difficult to get direct evidence as to their

(1) 100 P. R. 1895 (F.B.).

intention. But in this case there is strong circumstantial evidence which, in my opinion, leaves no doubt that there was in reality only one sale transaction. The two sale deeds were written by the same scribe and attested by the same witnesses. They were executed within one week of each other. No explanation is forthcoming as to why the vendee should have cared to buy, at first one *kotha* only for Rs. 500. The vendee stated in the witness-box that he meant to use it as a stable, but this is not mentioned in the sale deed itself. Again, if the *kotha* were meant to be used as a stable only, it would have been unnecessary to give a right of way through the inside of the house as was done in the present case. No vendor would have ordinarily cared to give a right of way through the inside of his house to the purchaser of a small *kotha* and there seems to be force in the contention of the appellant's counsel that this was done merely to give the vendee a superior right of pre-emption as against the present pre-emptor (*cf.* section 16, fifthly of the Punjab Pre-emption Act, 1913). The whole house was mortgaged with the vendee for a sum of Rs. 1,000 and it is in evidence that a sum of Rs. 1,824 was due as interest. Yet it is significant that Rs. 500 are alleged to have been paid in cash and not deducted from the mortgage charge. In the first sale deed it was stated that the mortgage charge amounted to about Rs. 4,000 and this was placed on the rest of the house. As a matter of fact, it appears that the mortgage charge amounted to Rs. 2,824 only as stated above, and there is reason to suspect that a larger mortgage charge was deliberately entered in this sale deed in order to prevent the vendor from refusing to sell the remaining part of the house. It was alleged on behalf of the respondents that the second sale took place because one

1931

LABH SINGH v. TAJ DIN.

BHIDE J.

Ranu Shah was pressing for repayment of his debts. But there is not a tittle of evidence on this record to show that this was a fact. It seems unlikely that Ranu Shah could have brought such pressure all at once to make the second sale necessary within a week, when the necessity for it had apparently not been felt till the 11th March.

In view of all these facts the conclusion seems to me irresistible that the sale transaction with respect to the whole house was settled on or before the 11th March 1923, and it was merely clothed in the form of two sale deeds in order to defeat the rights of pre-emptors. There could be obviously no other object in resorting to this course.

There are no doubt, authorities in support of the proposition that a vendee may defeat a pre-emptor's right by any legitimate means; but these authorities cannot help the vendee in the present case in view of the above finding. If there had been any *genuine* sale of the *kotha* in the first instance and then the rest of the house had been sold, the vendee might have successfully defeated the plaintiff's right of pre-emption. But as found above, there was in reality only one sale transaction. The two sale deeds must, therefore, be treated as part of one and the same transaction and as such subject to plaintiff's right of pre-emption as though the property were sold by one sale deed.

The only other point disputed before us was the market price of the property. The learned Judge of the trial Court has found the market price to be Rs. 5,700. The local commissioner found the market value to be Rs. 5,334. To this the learned Judge has added about Rs. 375 on account of certain repairs and improvements alleged to have been carried out by the

1931

LABH SINGH
v.
TAJ DIN.

BHIDE J.

vendee, when he was in possession as a mortgagee. But I see no jutification for this. The trial Court having found that the price mentioned in the sale deed was neither fixed in good faith nor paid, the plaintiff was entitled to pre-empt on payment of the market price of the property at the date of the sale. This price as found by the local commissioner must be taken to include the value of the improvements and I do not see that the vendee was entitled to claim anything more.

I would accordingly accept the appeal and give plaintiff a decree for possession of the whole of the house on payment of Rs. 5,334 to the vendee within two months of this date. If he pays the amount by that date, he will get his costs throughout. But if he fails to do so, the suit shall stand dismissed with costs throughout.

The respondents' cross-objections as to costs fail in view of the above decision and are dismissed with costs.

TAPP J.

TAPP J.—I agree.

N. F. E.

Appeal accepted.