

APPELLATE CIVIL.

Before Shadi Lal C. J. and Abdul Qadir J.

TIRATH RAM (PLAINTIFF) Appellant

versus

DINA NATH, DECEASED, THROUGH HIS
REPRESENTATIVES, AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No. 908 of 1927.

Pre-emption—Sale to two pre-emptors—splitting up bargain—effect of.

R sold the house in dispute for Rs. 3,000 to *K* who, on the day after plaintiff instituted his suit for pre-emption, re-sold it to *D* and *C*, in equal shares (whose rights of pre-emption were respectively superior and equal to those of plaintiff) for Rs. 3,500, the additional Rs. 500 representing the cost of the sale deed and improvements by *K*. The plaintiff having impleaded both *D* and *C* in his suit, pleaded that *D* had forfeited his rights of pre-emption by splitting up the bargain and that *C* had also forfeited his rights by purchasing only a moiety of the property when *D* had waived his rights.

Held, that there can be no doubt that a pre-emptor, whose right extends over the entire property sold, must take over the whole of the bargain, and is not entitled to pre-empt only a part of the property; the principle, upon which the rule is founded, being that by breaking up the bargain the pre-emptor may seek to take the best part of the property and leave the worst part of it with the vendee.

But, that this principle has no application when the vendee himself breaks up the bargain by parting with only a portion of it to a person who himself has a right of pre-emption; or where (as here) he sells the whole of the property to two pre-emptors, even though the right of pre-emption of one may be superior to that of the other.

For, the rule forbidding the splitting up of the transaction is not embodied in any statute, but proceeds upon gene-

1933

May 30.

ral principles; and it cannot be extended to a case to which the reason, underlying it, is wholly inapplicable.

Ude Ram v. Atma Ram (1), relied on.

Second Appeal from the decree of R. S. Lala Topan Ram, Additional District Judge, Amritsar, dated the 21st December, 1926, reversing that of Mirza Abdul Rab, Senior Subordinate Judge, Amritsar, dated the 12th February, 1925, and dismissing the plaintiff's suit.

BADRI DAS, for Appellant.

J. N. AGGARWAL, S. M. SIKRI and HUKAM CHAND,
for Respondents.

SHADI LAL C. J.—On the 8th January, 1923, one SHADI LAL C. J. Ram Ditta sold the house in dispute for Rs. 3,000 to Karam Bakhsh. In respect of this sale, Tirath Ram brought a suit for pre-emption on the 2nd January, 1924, and on the following day Karam Bakhsh sold the property in equal shares for Rs. 3,500 to Dina Nath and Chhajju Ram, who claimed to be the pre-emptors thereof. The plaintiff, thereupon, impleaded the subsequent vendees as defendants in his pre-emption suit. The question for determination is, whether he has succeeded in proving that his right of pre-emption is superior to that of the two sub-vendees.

Now, it is common ground that Dina Nath has a right of pre-emption superior to that of the plaintiff as well as that of his co-vendee Chhajju Ram. It is, however, urged on behalf of the plaintiff that Dina Nath was entitled to pre-empt the whole of the property, and that as he split up the bargain by purchasing only one-half of the house, he should be deemed to have waived his right of pre-emption. As regards

1933

TIRATH RAM
v.
DINA NATH.

1933

TIRATH RAM

v.

DINA NATH.

SHADI LAL C.J.

Chhajju Ram, it is admitted that his right of pre-emption is equal to that of the plaintiff, and that the latter cannot succeed unless he proves that he has a superior right of pre-emption. But it is argued that Chhajju Ram also has forfeited his right of pre-emption, because he purchased only a moiety of the property though he was entitled to the whole of it, when Dina Nath had waived his right of pre-emption in its entirety by splitting up the bargain.

There can be no doubt that a pre-emptor, whose right extends over the entire property sold, must take over the whole of the bargain; and that he is not entitled to pre-empt only a part of the property. The principle, upon which the rule is founded, is that by breaking up the bargain the pre-emptor may seek to take the best part of the property and leave the worst part of it with the vendee. This principle has obviously no application when the vendee himself breaks up the bargain by parting with only a portion of it to a person who has a right of pre-emption. He can have no grievance, if the plaintiff sues him for the remainder of the property—*vide Ude Ram v. Atma Ram* (1). Nor is he in any way injured, if he sells the whole of the property to two pre-emptors, even though the right of pre-emption of one may be superior to that of the other. A sale of this character does not involve a breaking up of the bargain as contemplated by the rule enunciated above. It must be remembered that the rule forbidding the splitting up of the transaction is not embodied in any statute, but proceeds upon general principles; and it cannot be extended to a case to which the reason underlying it is wholly inapplicable. I cannot, therefore, accede to the contention that both the

(1) (1924) I. L. R. 5 Lah. 80.

sub-vendees should be deemed to have waived their right of pre-emption.

It appears that the price paid by them exceeded the amount for which the house was originally sold, and it is contended that the purchase of the property by them cannot, therefore, be treated as having been made in exercise of their right of pre-emption. The short answer to this argument is that the additional amount represented the cost of the sale-deed and the compensation paid to the first vendee for the improvements effected by him.

For the foregoing reasons I would affirm the decree of the lower Appellate Court and dismiss the appeal with costs.

ABDUL QADIR J.—I agree.

ABDUL QADIR J.

N. F. E.

Appeal dismissed.

1933

TIRATH RAM

v.

DINA NATH.

SHADI LAL C.J.