

1939
 RAM RATTAN
 v.
 GOBIND RAM.
 BHIDE J.

learned District Judge and dismiss the appeal, but in view of the conflict of authorities leave the parties to bear their costs.

A. K. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Addison and Ram Lall JJ.

1939
 Jan. 30.

ALLAH DIN (DEFENDANT) Appellant,

versus

ALAM SHER KHAN (PLAINTIFF) Respondent.

Regular Second Appeal No. 1304 of 1938.

Second Appeal — Single Judge — rule 1, Cl. (ii) of Chapter 3-B, Volume V of Rules and Orders — Lahore High Court — Single Judge deciding a part of the Second Appeal and then referring a question of law to Division Bench -- Whether competent to do so.

Held (returning the second appeal to the Single Judge for disposal) that the established practice of all the High Courts in India is that a Division Bench from which no appeal lies except to the Privy Council, has power to refer a point of law to a Full Bench for decision but when a second appeal is before a Single Judge he is only entitled to refer the appeal to a Division Bench and not to decide a part of it first and then refer a question of law to a Division Bench.

Second appeal from the decree of R. B. Lala Ghanshyam Das, District Judge, Jhelum, dated 31st May, 1938, affirming that of Mr. Parshotam Sarup, Subordinate Judge, 4th Class, Pind Dadan Khan, dated 19th March, 1938, awarding the plaintiff possession by pre-emption of the land in dispute, etc., etc.

S. L. PURI, for Appellant.

ACHHRU RAM, for Respondent.

The order of the Division Bench was delivered by—

ADDISON J.—A second appeal was placed on the list of a learned Judge under rule 1, clause (ii) of Chapter 3-B of Volume V of the Rules and Orders of this High Court. He decided most of the points involved but as he was doubtful about one point he referred that to a Division Bench for decision. Accordingly the appeal came before this Bench for hearing to-day.

The established practice of all the High Courts in India is that a Division Bench, from which no appeal lies except to the Privy Council, has power to refer a point of law to a Full Bench for decision, subject to the sanction of the learned Chief Justice. When, however, an appeal is before a Single Judge, he is only entitled to refer the appeal to a Division Bench, and not to decide a part of it first and then refer a question of law to a Division Bench.

This is also obvious from proviso (a) to the rule already quoted, which is to the effect that a Judge may, if he thinks fit, refer any matter mentioned in any of the clauses of this rule to a Division Bench of two Judges. Now clause (ii) is “a second appeal of a certain value.” Under the rule, therefore, the Judge had only power to refer to a Division Bench the second appeal before him. Having decided part of it, it is necessary for him to decide the whole of it.

The reason for the rule is also obvious. A decision in a second appeal by a Single Judge is open to Letters Patent Appeal on a certificate of the Judge. It would be a strange state of affairs if an appeal were possible to a Division Bench under the Letters

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Patent after part of the appeal had already been before another Division Bench.

With these remarks we hold that we have no power to hear the reference and return the second appeal to the Single Judge for disposal in accordance with law. There will be no order as to costs before us.

A. K. C.

Reference returned.

LETTERS PATENT APPEAL.

Before Addison and Ram Lall JJ.

ALAM SHER KHAN (PLAINTIFF) Appellant,

versus

ALLAH DIN (DEFENDANT) Respondent.

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*May 8.***Letters Patent Appeal No. 56 of 1939.**

Punjab Pre-emption Act (I of 1913) SS. 3, 19, 20 — Pre-emptor — Whether bound to bid at auction sale — Omission on his part to do so — legal effect thereof — Pre-emptor making one bid at auction sale — Whether amounts to waiver of his right to pre-empt.

Held, that a pre-emptor is not bound to bid at an auction sale, and if he does not do so, he does not lose his right of pre-emption, the principle being that he is entitled to pre-empt the property at the price fixed and paid, and is not bound to make that price higher by competitive bidding.

Case law, discussed.

Held also, that the mere fact that the pre-emptor attended the auction sale and made one bid at it did not amount to a waiver of his right to pre-empt.

Letters Patent Appeal from the decree of Skemp J. passed in Regular Second Appeal No.1304 of 1938, on 7th February, 1939, reversing that of Rai Bahadur Lala Ghanshyam Das, District Judge, Jhelum, dated