

section 350 Act VIII. of 1859, the appeal on this point should be disallowed.

As to the amount of mesne profits, it appears to me that the Lower Court's order proceeded on sufficient evidence, and that no ground is shown for an interference.

I would dismiss the appeal with costs.

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ROY MOHAN
LAL MITTRA
v.
BISHNU
CHANDRA
CHATTERJEE.

Before Mr. Justice Loch and Mr. Justice Mitter.

ABDUL JABEL v. KHELATCHANDRA GHOSE.*

*Act I. of 1841—Act XXIII. of 1861, s. 14—Pre-emption.**

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July 15.

Section 14 of Act XXIII of 1861 is not applicable to permanently settled estates in Sylhet, nor to estates in any district of Bengal, unless extended thereto.

When property is sold by public auction at a sale in execution of a decree, and the neighbour or partner has the same opportunity to bid for the property as other parties present in Court, the law of pre-emption does not apply.

THIS was a suit to enforce the right of pre-emption, and to recover possession of 133 bigas of land, being 5 annas, 4 pies share of talook Maniram, appertaining to Pergunna Chowalish, by setting aside a deed of sale executed in favor of the defendant. The plaintiff alleged that he was a co-sharer of the aforesaid talook; that in execution of a decree held against another co-sharer, the disputed mehal was put up to sale and purchased by the defendant, Kalikumar, who was quite a stranger to the estate, on behalf of the other defendant, Khelat-Chandra; the plaintiff then claimed the right of pre-emption under the provisions of section 14 of Act XXIII. of 1861, his claim was allowed by the Principal Sudder Ameen; but on appeal, this order was eventually set aside on the 10th February 1866, on an application for review of judgment.

On special appeal, the plaintiff was referred by the High Court (L. S. Jackson and Glover, JJ.) to a civil suit (1). Accordingly the present suit was instituted by the plaintiff, for the establishment of his right.

Kalikumar, in his written statement, set up that the mehal in question was not a puttidari estate within the meaning of

* Special Appeal, No. 2317 of 2867, from a decree of the Judge of Sylhet, affirming a decree of the Principal Sudder Ameen of that district.

(1) 2 Wyman's Reporter, p. 17, 11th June 1866.

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section 14 of Act XXIII. of 1861 ; and, therefore, the plaintiff had no right of pre-emption ; and that he, the defendant, was not a stranger to the estate.

Knelatchandra Ghose also raised the same defence, and contended that, admitting that the plaintiff had a right of pre-emption under section 14, he lost his right by having failed to pay in the full amount of purchase-money on the day of sale.

The following issues were fixed by the Moonsiff :

1st.—Whether the plaintiff, under the provisions of section 14 of Act XXIII. of 1861, advanced his claim to the mehal sold by depositing the entire amount on the date of the auction-sale ? If the plaintiff has not paid in the entire sum, is he entitled to get the benefit of section 14 ?

2nd.—Whether the mehal in question is a puttidari estate within the meaning of section 2 of Act I. of 1841 ?

There was also an issue as to limitation, but the point was not raised in the High Court.

On the first issue, the Principal Sudder Ameen held, that as “ the plaintiff had not deposited the entire amount of the purchase-money, on the very day the land was sold by auction, but merely paid in the earnest-money, he was not entitled to institute this claim under the provisions of section 14 of Act XXIII. of 1861.” And on the second issue he held, that “ the mehal sold was not a puttidari estate, as defined by section 2 of Act I. of 1841. Puttidari estates are situated in the North-Western Provinces, and the term does not apply to the decennially settled estates of Bengal. On these grounds, the plaintiff’s suit was dismissed.”

On appeal the Judge was of opinion, that “ the Principal Sudder Ameen entirely misapprehended the meaning of section 14 of Act XXIII. of 1861. There is nothing whatever in that section to show, or even to imply, that the plaintiff was bound to pay in the full amount on the day of sale.” But he upheld the judgment of the lower Court on the material question at issue. He observed, “ that section 14 of Act XXIII. of 1861, under which the plaintiff comes into Court, refers, as is therein stated, to puttidari estates, such as are described in section 2 of Act I. of 1841, which applies to an estate, the like of which

does not exist in any part of Bengal Proper, neither a puttidar nor a lumbardar was ever heard of in the district of Sylhet. Puttidari estates are confined to the North-Western Provinces."

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In special appeal, it was contended, that the puttidari estate referred to in section 14 of Act XXIII. of 1861, is defined by section 2 of Act I of 1841. The only point to be tried is, whether the estate in dispute is a puttidari one under section 2 of Act I. of 1841. If it falls within the definition therein stated, the plaintiff is surely entitled to enforce the right of pre-emption.

Whether Act I. of 1841 was extended to Sylhet, is wholly beside the question at issue. Moreover, the plaintiff was entitled to succeed, under the general law of pre-emption, independent of section 14 of Act XXIII. of 1861.

Baboos *Annada Prasad Banerjee, Debendra Narayan Bose,* and Mr. *C. Gregory* for appellant.

Mr. *Allan* and Baboos *Anukul Chandra Mookerjee* and *Bhawani Charan Dutt*, for respondent, were not called upon.

The judgment of the Court was delivered by

LOCH, J.—We think that section 14 of Act XXIII. of 1861 and Act I. of 1841, are not applicable to permanently settled estates in Sylhet, and that unless those Acts have been extended, they are not applicable to the estates in any district of Bengal.

We think that the Judge was right in rejecting the plea of the special appellant, that he had a right of pre-emption under Act I. of 1841, and under section 14 of Act XXIII. of 1861, as contended for in the first ground. On the second ground taken by the special appellant, that he is entitled, as a co-sharer, under the general law of pre-emption, to have the property sold to him, we think that when property is sold by public auction, at a sale in execution of decree, and the neighbour or partner has an opportunity to bid for the property as other parties present in Court, the law of pre-emption cannot apply to such sales. We dismiss the appeal with costs.