Oudh Laws Act, 1876

Chapter II - Pre-emption

The right of pre-emption is a right of the persons hereinafter in mentioned or referred to, to acquire, in the cases hereinafter specified, immovable property in preference to all other persons.

Section 7 - Presumption as to its existence

Unless the existence of any custom or contract to the contrary is proved, such right shall, whether recorded in the settlement-record or not, be presumed-

(a) to exist in all village-communities, however constituted, and whether proprietary or under-proprietary, and in the cases referred to in section 40 of the Oudh Land-revenue Act, (17 of 1876) {See now the U.P.Land Revenue Act, 1901 (U.P.3 of 1901).} and

(b) to extend to the village-site, to the houses built upon it, to all lands and shares of lands within the village-boundary, and to all transferable rights affecting such lands.

Section 8 - Its existence in towns to be proved

The right of pre-emption shall not be presumed to exist in any town or city, or any sub-division thereof, but may be whom to exist therein and to be exercisable therein by such persons and under such circumstances as the local custom prescribes.

Section 9 - Devolution of right when property to property to be sold or forclosed is a proprietary or under proprietary tenure

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If the property to be sold or foreclosed is a proprietary or under-proprietary tenure, or a share of such a tenure, the right to buy or redeem such property belongs, in the absence of a custom to the contrary,-

1st, to co-sharers of the sub-division (if any) of the tenure in which the property is comprised, in order of their relationship to the vendor or mortgagor;

2ndly, to co-sharers of the whole mahal in the same order;

thirdly, to any member of the village-community; and

fourthly, if the property be an under proprietary tenure, to the proprietor.

Where two or more persons are equally entitled to such right' the person to exercise the same shall be determined by lot.

Section 9A - When a suit for pre-emption lies

{S.9A ins.by U.P.Act 15 of 1939, s.2.}

No suit shall lie for enforcing a right of pre-emption under this Act in respect of a portion only of the property sold or foreclosed:

Provided that, where the plaintiff has a right of pre-emption in respect of only a portion of the property sold or foreclosed, then notwithstanding anything to the contrary contained in any enactment a suit for the pre-emption of that portion only shall lie and the plaintiff shall have to pay the proportionate price or the proportionate amount due in respect of such mortgage for such portion of the property as the case may be.]

Section 10 - Notice to pre-emptors

When any person proposes to sell any property, or when he forecloses a mortgage upon any property, in respect of which any persons have a right of pre-emption, he shall give notice to the persons concerned of the price at which he is willing to sell such property, or of the amount due in respect of such mortgage, as the case may be:

{The proviso ins.by s.3, ibid.} [Provided that, where a person has a right of pre-emption in respect of a portion only of the property proposed to be sold or foreclosed, the notice to such person shall specify the proportionate amount of the price or the proportionate amount due in respect of such mortgage at which the person proposing to sell or foreclose is willing to sell or redeem such portion of the property, as the case may be.]

Such notice shall be given through the Court within the local limits of whose jurisdiction the property or any part thereof is situate, and shall be deemed sufficiently given if it be stuck up on the chaupal or other public place of the village or city in which the property is situate.

Section 11 - Loss of right of pre-emption

Any person having a right of pre-emption in respect of any property proposed to be sold shall lose such right, unless within three months from the date of such notice he or his agent pays or tenders the price {Subs.by s.4, ibid., for "aforesaid".} [specified in the notice given under the preceding section] to the person so proposing to sell.

Section 12 - Right of preemptor on foreclosure

When the right of pre-emption arises in respect of the foreclosure of a mortgage {Ins.by s.5, ibid.} [or a portion of the mortgage], any person entitled to such right may, at any time within three months after the giving of the notice required by section 10, pay or tender to the mortgagee or his successor in title the amount specified in such notice, and shall thereupon acquire a right to purchase the property, {Ins.by U.P.Act 15 of 1939, s.5.} [or a portion thereof, as the case may belt

On completion of the purchase the person exercising the right of re-emption shall be bound to pay to the mortgagee or his successor in title the amount specified in such notice, together with interest on the principal sum secured by the mortgage {Ins.by U.P.Act 15 of 1939, s.5.} [or the proportionate amount of such principal sum in respect of the portion of the property in which he possesses the right of pre-emption, as the case may be], at the rate specified by the instrument of mortgage, for any time which has elapsed since the date of the notice, and any additional costs which may have been properly incurred by the mortgagee or his successor in title.

Section 13 - Suit to enforce right of pre-emption

Any person entitled to a right of pre-emption may bring a suit to enforce such right on any of the following grounds (namely) :-

(a) that no due notice was given as required by section 10;

(b) that tender was made under section 11 or section 12 and refused;

(c) in the case of a sale, that the price stated in the notice was not fixed in good faith;

(d) in the case of a mortgage, that the amount claimed by the mortgagee was not really due on the footing of the mortgage and was not claimed in good faith, and that it exceeds the fair market-value of the property mortgaged, {Ins.by s.6, ibid.} [or the portion of the property mortgaged in respect of which he possesses the right of pre-emption, as the case may be].

If, in the case of a sale, the Court finds that the price was not fixed in good faith, the ours shall fix such price as appears to it to be the fair market-value of the property sold, {Ins.by s.6, ibid.} [or the portion of the property sold in respect of which he possesses the right of pre-emption, as the case may be].

If, in the case of a mortgage the Court finds that the amount claimed by the mortgagee was not really due on the footing of the mortgage, and that it was not claimed in good faith and that it exceeds the fair market-value of the property mortgaged {Ins.by s.6, ibid.} [or the portion of the property mortgaged in respect of which he possesses the right of pre-emption, as the case may be], the amount to be paid to the mortgagee shall not exceed what the Court finds to be such market value.

Section 14 - Decree to fix time for payment

If the Court find for the plaintiff, the decree shall specify a day on or before which the purchase-money or the amount to be paid to the mortgagee shall be paid.

Section 15 - Effect of non-payment of purchase money

If such purchase-money or amount is not paid into Court before it rises on that day, the decree shall become void, and the plaintiff shall' so far only as relates to such sale or mortgage, lose his right of pre-emption over the property to which the decree relates.