

Ram Kripal Vs. Shri Krishna Deo Pratap Singh and anr.

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Court : Allahabad

Decided On : Aug-05-1947

Reported in : AIR1948All108

Appellant : Ram Kripal

Respondent : Shri Krishna Deo Pratap Singh and anr.

Judgement :

Bind Basni Prasad, J.

1. This is an appeal by a defendant-Yendee arising out of a pre-emption suit. The facts are as follows : On 25-3-1943, Kedar Nath, defendant 2, sold to Ram Kirpal, defendant 1, who is the appellant before us, the following properties for an ostensible consideration of Rs. 70 : (1) One-sixth share of a grove situated in plot No. 161 containing eight mango and one jamun trees. (2) One-third share of the scattered mango, mahua and jamun trees situated on plots Nos. 851, 802, 798 and 704. (3) One-third share of a tamarind, a banian and a nim tree situated on Abadi plot No. 755. All the above properties are situated in village Amrahin.

2. The plaintiff brought a suit for pre-emption on 24-3-1944, that is to say, on the last day of limitation, alleging that there was a custom in the village according to which a ryot could not sell any grove or scattered trees to any one so long as the zamindar was willing to purchase it on a reasonable price. In support of this, he relied upon the entry in the wajib-ul-arz of 1875 for this village. The plaintiff is a co-

sharer in mahal Ghair-Khwahindgan of this village. Further, he contended that the real consideration which passed was Rs. 50. He, therefore, claimed the pre-emption of the above properties on payment, of Rs. 50 or such sum as the Court may determine.

3. The vendee pleaded inter alia that as no proprietary interest in land had been sold no pre-emption could be claimed. It was pointed out by him that only a tenancy grove and some scattered trees had been sold.

4. Learned Munsif held firstly, that the Agra Pre-emption Act, 1922, is complete on the subject with which it deals and no right of pre-emption can be claimed beyond its terms, and secondly, that in view of the provisions 'of Sections 3 and 11 of the said Act a suit for pre-emption was not maintainable as no proprietary interest in the land had been transferred. In view of this finding on the preliminary point he dismissed the suit.

5. The plaintiff preferred an appeal and the lower appellate Court disagreed from the trial Court in regard to both the findings. It has expressed its views in the following words:

The question for consideration is whether apart from this Act any right of pre-emption exists and whether it can be enforced by the plaintiff, As I have already said above, the Agra Pre-emption Act is only applicable where there is a transfer of interest in land. Where there is no such transfer, the Act is inapplicable. There is nothing in the Act which lays down that apart from the provisions in this Act no right of preemption shall be exercised in respect of any transfer whether it be a transfer of interest in land or otherwise. If the object of the Legislature were to abrogate all other rights of pre-emption except that provided by the 'Act the words' 'interest in land' would not have been used in Section 3 of the Act. In that case, the section would have provided that no right of pre-emption shall be enforceable in respect of any transfer made after the commencement of the Act in any area to which the Act applies except in accordance with the provisions of the Act. As the operation of the Act has been confined only to a transfer of interest in land and not to other transfers, I am of opinion that the Agra Pre-emption Act does not abolish the customary right of pre-emption which a person may have in respect of transfer

other than transfer of interest in land.

6. In the result, the lower appellate Court set aside the decree of the trial Court and remanded the suit with a direction to decide other issues and to proceed according to law. Against this order, the vendee comes in appeal to this Court.

7. The first question is whether the Agra Preemption Act 1922, is exhaustive on the subject with which it deals or whether any right of preemption can be claimed beyond the provisions of the Act. Having regard to the scheme of the Act, I am of opinion that it contains the whole of the law on the subject for the Province of Agra except the scheduled districts and the areas included within the limits of a Municipality, Cantonment, notified area or town area in the province of Agra.

8. It is well known that prior to the enactment of the Agra Pre-emption Act, 1922, the law of pre-emption was in a fluid state. There was no statutory law on the subject. Suits for preemption were then based on custom, contract or declarations as contained in the *wajib-ul-arz* or other records. Interminable litigation followed on sales of land. In this state of affairs, the Provincial Legislature stepped in to define and consolidate the law on the subject in clear terms and to put it on a sound basis and it enacted the Agra Pre-emption Act, 1922. The preamble of an Act is usually a key to 'its interpretation and unless the express provisions of the Act point to a different interpretation the preamble should be construed as laying down the object of the Act. The Act should be so interpreted as to advance its object. The preamble of this Act runs as follows:

Whereas it is expedient to consolidate and amend the law relating to pre-emption in the Province of Agra.

9. The words 'consolidate and amend' are important and they clearly imply that the law as contained in the Act was intended to be exhaustive.

10. Sub-section (2) of Section 1 provides That the Act extends to the whole of Agra, except the scheduled districts. The proviso to it empowers the Provincial Government to extend by notification the provisions of the Act to the whole or any portion of the scheduled districts. Sub-section (3) excludes the application of the

Act to the areas included within the limits of a Municipality, Cantonment, notified area or town area.

11. Section 2 of the Act contains a saving provision in regard to rights, privileges and obligations or liabilities acquired, accrued or incurred in respect of any transfer made before the commencement of the Act.

12. Section 3 is very important and it provides as follows:

No right of pre-emption shall be enforced in respect of any transfer made after the commencement of this Act of an interest in land in any area to which this Act applies, except in accordance with the provisions of this Act.

Provided that where there is no right of preemption under Section 5, the provisions of the Muhammadan law of pre-emption shall not be affected in case the vendor and the pre-emptor are both Muhammadans.

The expression 'right of pre-emption' is defined as follows in Sub-section (9) of Section 4:

'right of pre-emption' means the right of a person on a transfer of immoveable property to be substituted in place of the transferee by reason of such right.

13. The word 'land' is defined in Sub-section (3) of Section 4 as follows:

'Land' includes things attached to the earth' Or permanently fastened to anything attached to the earth, when sold or foreclosed along with the land to which they are attached, but not otherwise.

The marginal heading of Section 3 runs as follows:

Abolition of customary and other rights of pre-emption excepting under Muhammadan law,

I am aware that the marginal heading of a Section is of no avail in the interpretation of the section if the express provisions of the section point to the contrary. But in the present case the marginal heading is not in any way repugnant

to the provisions of Section 3. A plain construction of Section 3 is that the right of preemption has been abolished except in accordance with the provisions of the Act and in certain circumstances with those of the Muhammadan law.

14. Section 5 of the Act provides for the mahals or villages in which the right of preemption shall be deemed to exist. Section 6 contains certain saving provisions in regard to pre-emption available under the Code of Civil Procedure, 1908, U.P. Land Revenue Act 1901, and the Bundelkhand Encumbered Estates Act 1903. Section 7 debars a person not entitled to purchase property under the Bundelkhand Alienation of Land Act, 1903, from claiming pre-emption. Section 8 enumerates sales to Government, local authorities and other bodies in respect of which no rights of, pre-emption are to accrue.

15. Section 9 is important. It provides that

no right of pre-emption shall accrue on a sale to, or foreclosure by, an ex-proprietary tenant, of any proprietary interest in land in the mahal in which he holds such ex-proprietary tenancy.

The underlined (here italicized) words are important. They indicate that the intention was to give a right of pre-emption only on the sale of proprietary interest in land. This is made further clear by the provisions of Section 11 which runs as follows:

Subject to the foregoing provisions a right of preemption shall accrue to the persons mentioned in Section 12 whenever a cosharer or petty proprietor sells any proprietary interest in land forming part of any mahal or village in which a right of pre-emption exists, or when any such interest is foreclosed.

16. Section 14 is also important. It provides that

when a cosharer or petty proprietor proposes to sell any land in any case in which such sale would give rise to a right of pre-emption, he may give notice by registered post to all persons having a right of pre-emption in respect of such sale.

17. The words 'cosharer' and 'petty proprietor' are defined in Sub-sections (1) and (7) of Section 4 and it will be seen that only a proprietor comes within these definitions.

18. A consideration of the provisions set out above lead to the following inference : The Act contains the entire law on the subject of preemption, as it was passed with the object of consolidating and amending the law relating to pre-emption. Its provisions deal not only with the future rights of pre-emption, but also contain saving provision of rights already accrued. It indicates the areas to which the Act will be applicable. It abolishes the customary and other rights of pre-emption except, in certain circumstances, under the Muhammadan law. It lays down the mahal or villages in which the right is deemed to exist. It saves the right of preemption available under other enactments. It provides that in the case of sales to the Crown and certain other authorities or purchase of proprietary interest by an ex-proprietary tenant no right of pre-emption shall accrue. By Section 11, it limits the cases in which the right of pre-emption is to accrue. In Section 12 it specifies the classes of persons who will be successively entitled to exercise the right of pre-emption. I see no room for any doubt that the Act is exhaustive on the subject of pre-emption, in regard to territories to which it is applicable.

19. In this connection I may refer to *Bhola Nath v. Shiv Singh* : AIR1939 All253 in which it was observed that the Agra Pre-emption Act contains the whole of the law of pre-emption in this Province.

20. Learned Counsel for the plaintiff-respondent urged that the Act deals only with the sales of proprietary interest in land and not those of any other interest in land. I am unable to agree with this contention. The Act deals with the right of pre-emption as defined in Sub-section (9) of Section 1. This definition is most general in terms and it is not limited to rights arising on the transfer of only proprietary interest in land.

21. The second point is whether according to the provisions of the Act a right of pre-emption arises on the sale of a grove and scattered trees. A sale of a grove and scattered trees does fall within the words 'transfer of immovable property' which occurs in the definition of the expression 'right of pre-emption' in Sub-

section (9) of Section 4. Now, Section 3 abrogates all rights of pre-emption except such as accrue in accordance with the provisions of the Act. We have, therefore, to turn to Section 11 which provides for the cases in which the right accrues. According to this section, a right of pre-emption can accrue only when a cosharer or a proprietor sells any proprietary interest in land. It is important to note here that in Section 3 the words 'interest in land' are without the adjective 'proprietary'. But in Section 11 the word 'proprietary' occurs. The position clearly is that no right of pre-emption can accrue after the enactment of the Agra Preemption Act, 1922, except when a proprietary interest in land is sold or foreclosed. This inference is further strengthened by the provisions of Section 14 which provides for a notice only by a proprietor when he desires to sell any land. I see no force in this contention.

22. The third point argued for the respondents was that the sale of grove and scattered trees does not transfer any interest in land and hence the Act is not applicable. I am unable to agree with this contention also. A grove-holder does possess some interest in land. Section 205, U.P. Tenancy Act, 1939, will show that a grove-holder is one who has planted a grove on land which was let or granted to him by a landlord for the purpose of planting a grove or who with the written permission of the landlord, or in accordance with the local custom entitling him to do so, on land which he held as a tenant has planted a grove. It is impossible to say that a grove-hinder has no interest in land. He has a right to re-plant the trees as they are cut or die and to be in possession of the land so long as the grove continues. Owners of scattered trees have also interest in the land on which the trees stand. They have a right that the trees shall not be removed from the land by any one without their permission. They are entitled to take necessary action on the land for the maintenance and upkeep of these trees. They can go there to take their produce. It may be that the degree of their interest in the land qua ownership of scattered trees may not be the same as in the case of a grover-holder but it cannot be said that they have absolutely no interest in the land as owners of scattered trees.

23. Lastly, it was argued for the respondents that the right claimed by the plaintiff was not a right of pre-emption but a customary right. This point was not argued in the Courts below. On the other hand, the plaintiff's contention was just the

opposite. In para. 5 of the plaint the plaintiff described the right as one of pre-emption. In both the Courts below the case was argued as one of pre-emption. What else is the nature of right claimed by the plaintiff if not that of pre-emption? Pre-emption is a right of substitution for the vendee and this is just the right which the plaintiff claims. I see no force in this contention also. A right of pre-emption based on custom has been abolished by Section 3 except in accordance with the provisions of this Act and, as already held above, according to the, Act a right of pre-emption can accrue only when there is a sale or foreclosure of proprietary interest in land and in no other case.

24. I would, therefore, allow this appeal, set aside the order passed by the lower appellate Court and restore that of the trial Court dismissing the suit. The appellant should have the costs of all the Courts from respondent 1.

Malik, J.

25. I have had the advantage of reading the judgment of my learned brother. He has fully dealt with the points raised in the appeal and I have, therefore, not much to add. I agree that where an 'interest in land' in any area, to which the Agra Pre-emption Act applies, is transferred no right of pre-emption can be enforced except in accordance with the provisions of the Act. To that extent the Act is certainly exhaustive and is intended to be so as is clear from Section 3 itself.

26. My learned brother has set out the details of the property sold, which includes one-sixth share of a grove and one-third share in certain scattered trees. Learned Counsel for the respondent has tried to support the judgment of the lower Court by drawing a distinction between 'grove' and 'groveland' and has cited cases to show that the word 'grove' means the trees, while the 'groveland' is the land underneath. He has relied on certain rulings under the Tenancy Act. As regards scattered trees, it is urged that there can be no doubt that the trees alone were being sold.

27. I am not prepared to accept learned counsel's argument that the word 'grove' means only the trees. When a grove is transferred, the transferee gets the rights of the transferor which include the right to plant fresh trees, right to replant old trees, to go on the land, in short do everything for the maintenance, upkeep and

enjoyment of the property. It will be very difficult to hold that the transfer of a grove, not with the object that the transferee should cut the trees and clear the ground but with the object that the transferee should enjoy possession of the land and the trees and make appropriate use of it is not a transfer of interest in land. Scattered trees, which are not standing timber but are fruit bearing trees and are sold not for the purpose of being cut and removed but that they should remain rooted in the earth, are immovable property as denned in the Transfer of Property Act (Act 4 [IV] of 1882), Section 3. In Section 4, Sub-section (3), Pre-emption Act 'land' is denned as including things attached to the earth or permanently fastened to anything attached to the earth, when sold or foreclosed along with the land to which they are attached, but not otherwise. Learned Counsel has urged that as the land has not been sold but only the scattered trees have been sold, therefore, it would not be a sale of land. Learned Counsel has, however, failed to notice that this definition was not intended to be exhaustive. Legislature only wanted to make it clear that the fixtures etc., when sold along with land or building to which they are affixed shall also be pre-emptible.

28. When a tree rooted in the earth is sold, not with the object that it should be severed from the earth and the wood appropriated but the transferee is given the right to enjoy the fruits of the standing tree and has the right to have access to it, it is difficult to hold that such a sale is not governed by Section 3 of the Act and no interest in land has been transferred within the meaning of that section. I, therefore, agree with the order proposed and would allow this appeal, set aside the decree of the Court below, restore that of the trial Court and would allow the appellant costs in all the Courts as against the plaintiff-respondent.

29. The appeal is allowed, the decree of the lower appellate Court is set aside and the decree of the trial Court dismissing the plaintiff's suit is restored. The appellant will get his costs in all the Courts from the plain tiff-respondent.