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Court : Allahabad

Decided On : May-25-1915

Reported in : (1915)ILR37All522

Judge : Henary Richards, C.J. and ;Tudball, J.

Appellant : Shadi

Respondent : Nathu and ors.

Judgement :

Henary Richards, C.J. and Tudball, J.

1. This is a defendant's appeal arising out of a suit for pre-emption. The pre-emption claim was based on Muhammadan Law. Both the courts below have decreed the claim and the defendant vendee comes here in second appeal. The vendor is the husband of the vendee and the property was sold to the lady in lieu of her dower debt. The plea taken before us is that the preliminary demands were not properly satisfied and, therefore, the suit ought to have been dismissed. The facts are that at the time when the sale came to the knowledge of the plaintiff pre-emptor the vendee was present and witnesses also were present. The plaintiff at once claimed his right of pre-emption invoking][the witnesses. It is urged that the two demands ought to have been made separately, one immediately after the other, that practically only one demand was made and that does not satisfy the requirements of Muhammadan Law. The authorities are against the appellants as

Mr. Amir Ali in his book points out; if at the time of the talab-i-muwasibat the pre-emptor had an opportunity of invoking witnesses in the presence of the seller or the purchaser or on the premises to attest the immediate demand, it would suffice for both the demands and there would be no necessity for the second. The reason of this is obvious. A pre-emptor under the Muhammadan Law, directly he hears of the sale, has at once to make a demand wherever he may be, whether the purchaser or the seller are or are not present, whether witnesses are or are not present, but it is necessary for him to convey knowledge of his demand to the vendee or the vendor and to call attention to the fact that he did make his first demand and to invoke his witnesses to that effect. Where all the parties are present, and the witnesses are present, it is sufficient for him to make his claim and call the attention of the witnesses to the fact that he is doing so and that he insists upon his right. See the remarks in *Nundo Pershad Thakur v. Gopal Thakur* (1884) I.L.R. 10 Calc. 1008.

2. The next contention is that no right of pre-emption can arise where property is transferred by a husband to his wife in lieu of the dower debt. This contention is based upon a passage to be found in Mr. Amir Ali's book, page 713, Vol. I (4th edition). No other authority has been cited. On the other hand there is a decision of this Court in *Fida Ali v. Mueaffar Ali* (1882) I.L.R. 5 All. 65, which is based upon a much older decision of the Sader Dewani Adaulat of 1864. Mr. Amir Ali challenges this decision saying that it appears to proceed on a wrong interpretation of the law but he does not point out the error or discuss the question any further. We think that we should follow the ruling of this Court and we therefore hold that under the circumstances of the present case the right of pre-emption did arise.

3. The result is that the appeal fails and is dismissed with costs.