

Batasi Lal Vs. Arjun Singh

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Court : Allahabad

Decided On : Jul-28-1910

Reported in : 7Ind.Cas.777

Judge : John Stanley C.J. and ;Banerji, J.

Appellant : Batasi Lal

Respondent : Arjun Singh

Judgement :

1. This appeal arises out of a suit for pre-emption. The facts are these:-- One Karan Singh executed a deed of conditional sale in favour of Batasi Lal, the defendant-appellant. Subsequently he sold his interests in the mortgaged property i.e., the equity of redemption, to Net Ram defendant. Net Ram and Batasi Lal brought a suit for foreclosure and obtained a decree on the 4th September 1901, which was subsequently made absolute. The suit out of which this appeal arises was brought by the plaintiff, who is the brother of Karan Singh, to pre-empt the absolute sale which has taken place in consequence of the foreclosure decree. After the purchase made by Net Ram from Karan Singh, a partition of the village was effected and the property in question was formed into a separate mahal. The plaintiff claims pre-emption, first, as the brother of Karan Singh and, secondly, as owning a share in the village. He is not a co-sharer in the mahal in which the property in suit is situate. The Wajib-ul-ars of the village upon which he relies provides that the right to claim pre-emption shall, in the case of a transfer by sale

or mortgage and not a gift, accrue first to the off spring (aulad) and then after him to own brothers and nephews and also cousins and sharik hakiat deh. The plaintiff claims pre-emption under the first clause and also under the last clause referred to in the Wajib-ul-arz. The Court of first instance dismissed his claim but the lower appellate Court has decreed it. The learned Judge of the lower appellate Court held that the plaintiff had no right of pre-emption by reason of his being a brother of Karan Singh but he is of opinion that he comes within the category of sharik hakiat deh and is thus entitled to pre-empt. It is contended on behalf of the respondent that the plaintiff is also entitled to claim pre-emption by reason of his being the brother of Karan Singh. We do not agree with this contention. Karan Singh had parted with all his rights in the property in favour of Net Ham at the time when the decree for foreclosure in respect of which pre-emption is claimed was passed. Net Ram was the person entitled to the property and it was his right which was foreclosed by the decree. The plaintiff is not Net Barn's brother and, therefore, he cannot claim as a pre-emptor of the first class and we do not agree with the learned Judge that the plaintiff comes within the category of sharik hakiat deli. The word sharik means a partner and the fact of its being used in the Wajib-ul-arz shows that what was intended was that the person entitled to the right of pre-emption must be a sharik or partner of the vendor in the hakiat of the village. After partition he ceased to be such sharik. The principle of the ruling in Mahesh, Dat Pande v. Gokul Nath 7 A.L.J. 415 : 6 Ind. Cas. 115 applies to this case. There it was held that sharik meant a partner or co-sharer of the vendor. As in that case so in this, the share-holder in the village who has a right of pre-emption must be the vendor's sharik or partner, i.e., there must be a common bond between him and the vendor. Such bond has ceased to exist owing to a partition under which the plaintiff has obtained a share in a different mahal. He is not, therefore, entitled to claim pre-emption and his suit ought to have been dismissed. We do not think that in this respect the fact of a new Wajib-ul arz having been prepared after partition, by which the co-sharers agreed to abide by the terms of the old Wajib-ul-arz, makes any difference as regards the plaintiff's right. We, accordingly, allow the appeal, set aside the decree of the Court below with costs and restore that of the Court of first instance. The costs in this Court will include fees on the higher scale.

