

Mujib-ullah Vs. Umed Bibi and anr.

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SooperKanoon Citation : sooperkanoon.com/458092

Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1899)ILR21All119

Judge : Burkitt and ;Dillon, JJ.

Appellant : Mujib-ullah

Respondent : Umed Bibi and anr.

Judgement :

Burkitt and Dillon, JJ.

1. This is an appeal brought by a plaintiff in a preemption suit. The sale deed, in respect of which the suit has arisen, was dated the 7th of May. 1894, and purported to convey to the vendee shares in some 47 villages, 3 pacca houses and a mortgage deed. In the Court of First Instance (Subordinate Judge of Gorakhpur) the suit was dismissed on the ground that the document upon which the suit was founded was not a sale deed, but was a deed of gift. On the appeal on that point to the District Judge it is not easy to say what the opinion of the Lower Appellate Court was. The learned Judge disagreed with the finding of the Court of First Instance, that the document was a deed of gift, but at the same time seems to have held that it was not a sale, that it was only a 'family arrangement,' and finally affirmed the decree of the Court of First Instance, on the ground that there were 'no materials for determining the plaintiff's share of the Rs. 15,500 set

forth in the sale deed, and it passes the wit of man to devise a decree which should assign to the plaintiff his proper share of the contingent liabilities imposed on the transferee.' With respect to the judgment of the Lower Appellate Court we desire it to be understood that we do not concur in any proposition of law laid down therein, but as the question as to the nature of the deed and the manner in which the sum payable by the pre-emptor should be calculated have not been fully discussed on both sides in this case, we refrain from saying any more on that matter. On behalf of the respondent Pandit Moti Lal contended that this case was exactly on all fours with the case of Muhammad Wilayat Ali Khan v. Abdul Rab (1888) I.L.R. 11 All. 108. In that case, as in the present case, two properties were claimed by right of pre-emption, one property being claimed under the Muhammadan law and the other by virtue of the provisions of the wajib-ul-arz. Such is also the case here, the three houses being claimed under the Muhammadan law, and 8 out of the 47 shares sold being claimed under the provisions of the wajib-ul-arz. In the case just cited the plaintiff pre-emptor failed to prove that he had fulfilled the conditions required by Muhammadan law as preliminaries to the institution of a claim for pre-emption. So here also it has been found as a fact by both the lower Courts that the plaintiff here failed to perform these preliminaries. The result is that the plaintiff appellant, being shown to be disqualified 'from claiming to pre-empt these houses under the Muhammadan law, cannot possibly get a decree for the whole of that which by law, but for his own laches, he would be entitled to pre-empt. In the case of Muhammad Wilayat Ali Khan v. Abdul Rab (1888) I.L.R. 11 All, 108, cited above, the late Chief Justice of this Court, whose opinion on such a matter is entitled to every weight and respect, remarked as follows:--' The question then arises, can there be any difference between the case of the plaintiff coming into Court and claiming a portion of the property sold, and the case of a plaintiff coming into Court and claiming the whole, he being at the time disentitled by his own act or laches to maintain a claim as to a part? It appears to us that there can be no difference in principle, and that exactly the same result must follow in this case as would have followed if the plaintiff had come into Court and had abstained from claiming the property in Moradabad. A person who claims to be a pre-emptor and has disqualified himself from claiming the whole, cannot be in a better position than a person who has come into Court

and has claimed a part only when he was entitled to claim the whole.' The case now before us and the case just cited are admittedly on all fours. No attempt has been made, or indeed could be made, to show any distinction between them. It is contended that we should not follow the rule laid down in that case. We, however, fully concur in the rule laid down therein and in the reason given for it. We agree with the learned Judges who decided that case, that an intending pre-emptor who has placed himself in the position occupied by the plaintiff here and by the pre-emptor in the case of Muhammad Wilayat Ali Khan v. Abdul Rab (1888) I.L.R. 11 All. 108, must be considered to have, by his own act as a matter of law, forfeited his right to pre-empt any portion of the property. We follow the rule of law laid down in that case and for the reasons given above, and not because we agree with the Lower Appellate Court, with whose judgment, as a matter of fact, we disagree, we dismiss this appeal with costs.