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Court : Allahabad

Decided On : May-16-1927

Reported in : AIR1927All545; 103Ind.Cas.308

Appellant : Mohammad Bashir Khan and anr.

Respondent : Mt. Kulsum Bibi and ors.

Judgement :

1. This is a plaintiff's appeal arising out of a suit for pre-emption of shares sold in two mahals in village Mohammadpur Kalan. The property was transferred under a sale-deed dated the 16th of February 1923, which was presented for registration on the same date, but was actually registered on the 17th of February. The plaintiffs came into Court both on the ground of Mahomedan Law, the custom of pre-emption, and the provisions of the Agra Pre-emption Act of 1922. No evidence was led as regards the performance of any talab, and the case so far as it was based on the Mahomedan Law was apparently not pressed. The Court below has held that the transfer took place before the coming into force of the Agra Pre-emption Act and is therefore not governed by the new Act. It has also held that inasmuch as there were single proprietors in both mahals at the time when the wajib-ul-arzes recording an entry of a right of pre-emption were prepared, there could be no custom, nor even any contract. The suit was accordingly dismissed.

2. In appeal it has not been pressed before us that the entry made at the time of the settlement when there were single proprietors in both the mahals could in any

sense be the record of a custom of pre-emption, or a binding contract between co-sharers. The only point alleged is that the case is governed by the new Act. The learned vakil for the appellants argues that inasmuch as under Article 10 of the Limitation Act the period fixed for suits for pre-emption is one year from the date of the registration of the document, the cause of action to institute a suit arises only when the registration has been effected. He therefore argues that it must be supposed that the present transaction was complete only when the registration was effected.

3. It is not disputed that the new Act came into force on the 17th of February 1923. In fact this has been clearly so held in the case of *Sarju Prasad v. Bhagwati Prasad* : AIR1925 All542 .

4. Section 2 of the Agra Pre-emption Act provides that nothing in the Act shall affect any right in respect of any transfer made before the commencement of the Act. We have nothing to do therefore with the period of limitation prescribed for suits for pre-emption. The only point to consider is when the transfer which is sought to be pre-empted actually came into effect. The argument on behalf of the appellants ignores the provisions of Section 47 of the Registration Act under which a registered document operates from the time it would have commenced to operate if no registration thereof had been required or made, and not from the date of its registration. Although the sale deed was incomplete till the formality of registration had been gone through, once that requirement was fulfilled the sale took effect from the date of its execution. This is quite clear on the wordings of Section 47. As pointed out by their Lordships of the Privy Council in the case of *T. V. Kalyanasundaram Pillai v. Karuppa Mooppanar* registration is a necessary solemnity in order to the enforcement of a gift of immovable property, but it does not suspend the transfer of the gift until registration actually takes place. This is a necessary consequence of the provision that registration does not depend upon the consent of the executant, but is the act of an officer appointed by law for the purpose who must register the document if duly executed and presented as required, neither death nor revocation by the executant being a ground for refusing registration. In our opinion, therefore, the transfer in this case was, in the eye of the law made on the 16th of February 1923 and not on the 17th. Section 2 of the

Act therefore makes the new Act inapplicable to this transfer.

5. The result, therefore, is that this appeal is dismissed with costs.

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