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Court : Allahabad

Decided On : Jul-13-1926

Reported in : AIR1926All722a; 97Ind.Cas.340

Appellant : Lal Behari Misra and anr.

Respondent : Equeen Mohammad Hajjam and anr.

Judgement :

1. This is an appeal by two plaintiffs arising out of a pre-emption suit. The ostensible sale consideration entered in the sale-deed was Rs 793 7-8. The Court of first instance found this consideration proved. The defendant-vendee had taken the plea that the Plaintiff No. 1 had acquiesced in the sale and was estopped by his conduct from claiming it and further that in consequence Plaintiff No. 2 also was disqualified. This contention was not accepted and the suit was decreed. On appeal the learned Subordinate Judge held that the true consideration was not Rs. 793-7-8 but that out of it a sum of Rs. 184-8-0 was not genuine but fictitious. He has, however, held that Lal Behari plaintiff agreed to the sale-deed in question and was present at the time of its registration and accepted the amount which was left with the vendee for payment to him. He has therefore held that Lal Behari was estopped from claiming pre-emption. He has then gone on to hold that under Section 21 of the Agra Pre-emption Act Plaintiff No. 2 also by reason of having joined Plaintiff No. 1 with her has lost her right to pre-empt.

2. It may be pointed out that before the new Act was passed the rulings of this Court were that a pre-emptor is disqualified from pre-empting if he joins with him a stranger, that is to say, a person who has no locus standi to pre-empt the sale. But where one co-sharer had joined another co-sharer in the suit but this co-sharer was disqualified from preempting by reason, for instance, of not having performed the necessary demands required by the Mahomedan Law it used to be held that the first co-sharer was not disqualified from maintaining the suit merely because he had joined the second co-sharer in it. We may refer to the case of Chotu v. Husain Bakhsh [1893] AWN 25. Plaintiff No. 1 is admittedly not a stranger to the mahal, He is not such a person as a would be objectionable to the coparcenary body if he were to acquire this share. His disqualification if at all is said to arise owing to his conduct in having accepted the sale before the suit. This at best amounts to an equitable estoppel.

3. We do not think that Section 21 was intended to alter the previous law. Under Section 21 where a person having a right of pre-emption sues jointly with a person not having such a right he shall lose his right. The question is as to the scope of the phrase 'with a person not having such a right,' that is whether a person who had such right and lost it by acquiescence is included in the category of persons not having such right, or whether that phrase only means persons not included in the category of recognized pre-emptors.' Even if the language of the section were ambiguous we would prefer to give it the interpretation which would be in accord with the previous view, but we think that there is really no ambiguity and the section does not contemplate persons who possess the right of pre-emption but who are disqualified in equity from claiming it. In this view Plaintiff No. 2 at any rate would not be disqualified from claiming pre-emption merely because of having joined plaintiff No. 1 who is said to have been disqualified.

4. We are, however, of opinion that in this particular case even Plaintiff No. 1 is not disqualified. The sale-deed was ostensibly for a sum of Rs. 793-7-8 The plaintiff can be taken to have notice that the transaction was settled at the price and his acquiescence can only amount to a refusal to purchase the property at the price. But as has now been found by the lower appellate Court the price was fraudulently inflated in the sale deed presumably with a view to defeat possible pre-emptors. If

the plaintiff had been offered this property at the true price he had refused to take it, he would certainly have been estopped, but this not being the case it is difficult to hold that the plaintiff is under these circumstances estopped in equity.

5. We, accordingly, allow this appeal and setting aside the decree of the lower appellate Court decree the claim for preemption of the property on payment of Rs. 608-15-8 within six weeks from this date. In case the deposit is made in time the plaintiffs will be entitled to their costs in all Courts. If the amount is not paid the suit shall stand dismissed with costs in all Courts. Fees will include fees on the higher scale.

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