

Mt. Chandi Devi Vs. Deoki Nandan and ors.

Mt. Chandi Devi Vs. Deoki Nandan and ors.

SooperKanoon Citation : sooperkanoon.com/467874

Court : Allahabad

Decided On : Dec-22-1949

Reported in : AIR1952All561

Judge : Malik, C.J. and ;Bind Basni Prasad, J.

Acts : Mohammedan Law; Hindu Law

Appeal No. : First Appeal No. 198 of 1945

Appellant : Mt. Chandi Devi

Respondent : Deoki Nandan and ors.

Advocate for Def. : H. Lal Kapoor and ;Gopal Ji Mehrotra, Advs.

Advocate for Pet/Ap. : B.L. Gupta and ;G.S. Pathak, Advs.

Disposition : Appeal dismissed

Judgement :

Malik, C.J.

1. This is a deft.'s appeal in a suit for pre-emption. On 5-2 1949, defts. 2 to 6 sold a house situate within the municipal limits of Shahjahanpur to the appellant Mt. Chandi Devi for Rs. 7000. The suit for pre-emption was filed by Deokinandan, who is a junior member of the joint Hindu family, along with his uncles Kedar Nath &

Raja Ram, & it is said that Kedar Nath is the Karta of the family. The plff. heard of this sale & it was claimed on his behalf that immediately on coming to know that the property had been sold he performed the first talab & then took out a sum of Rs. 4000 which he had been informed was the sale price, & went to the house in suit & in the presence of Kanhai, Badhey Shyam, Raja Ram & Goberdhan performed the second talab. He said in his deposition that he had said on the spot :

'I had already performed the first demand & that I was the pre-emptor & am performing the second demand & am ready to pay the price & that the witnesses were to bear testimony to the above facts.'

To the same effect is the evidence of Badhey Shyam & Kanhai, the two persons who went along with him at the time when the second demand was performed. It was not denied in the lower Court that the plff. is a shafi-e-khalit & shafi-e-jar. It was, however, said that the suit must fail as the second demand was not validly performed, the plff. offering, to pay only Rs. 4,000 & not the real price of Rs. 7000. That argument has been repeated before us, though the finding on the point is against the appellant. It has been further argued before us that Eedar Nath & Raja Ram, the two elder members of the family, had refused to purchase the property when it was offered to them & the plff. was, therefore, estopped from claiming pre-emption. Lastly, it has been urged that a junior member of a joint Hindu family has no right to file a suit for pre-emption on behalf of the joint family. The other two points that had been raised in the lower Court have not been pressed before us & we need not, therefore, consider the same.

2. As regards the first point, it is true that the plff. was informed, as he has said in his statement in Court, that the sale price was Rs. 4000 & that it was not till two months after the second demand that he came to know, when he got a copy of the sale deed, that the price entered in the sale deed was Rs. 7000. But from that it does not follow that the plff. offered to purchase the property for Rs. 4,000 only & not for the real sale consideration, if the sale consideration was more than Rs. 4000. The plff. stated in his examination in chief that 'he had said that he was ready to pay the price.' There was no cross examination on the point on behalf of

the debt. The demands have to be performed according to the rules of Mohammedan Law & according to this law if a person performing a demand states that he is willing to pay the price the demand is valid, even if he did not know that he had been misinformed about the correct amount of the sale consideration. If on the other hand, the plff. had while performing the demand, said that he would pre-empt the property on payment of Rs. 4000 the second talab might have been defective. In the absence of any cross examination about the statement made in the examination in chief that the plff. had said that he was ready to pay the price, the mere fact that he had been misinformed & at that time he believed that the price was Rs. 4,000 would not invalidate the second demand.

3. As regards the second point that Kedar Nath & Baja Bam had refused to purchase the property, in the written statement on behalf of the appellant, it was pleaded that the other members of plff's family knew that the property was going to be sold but they did not show 'any willingness to purchase'. This does not amount to refusal to purchase. A pre-emptor is not bound to show his willingness, or to go to the vendor & the vendee & warn them that he has a right to pre-empt. He would not be estopped from preempting the property unless the property was offered to him at the price settled & he had refused to purchase the same. On the pleadings, there fore, no question of refusal arises. In a notice given to Rajaram on 8-3-1943, on behalf of the vendee it was said.

'we do not admit that you all have a right of pre-emption & despite, we have purchased the house within the knowledge & information of all of you & none of you has made the demands relating to pre-emption.'

4. Even from this notice it is clear that even on that date it was not suggested that the house had been offered to Raja Ram or his brother Kedar Nath & they had refused to make the purchase. All that was said was that they had knowledge & information but did not make any demand. The appellant, has produced two witnesses Ravi Dat & Bishambhar. Their evidence was not accepted by the lower Ct. &, in view of the plea in the written statement & in view of the notice, we are not surprised that the learned Judge did not accept the evidence of these two witnesses. We have looked into the evidence & we agree with the conclusion

arrived at by the learned Judge that the evidence is not reliable, & on the basis of the depositions of these two witnesses it is not possible to hold that the Karta of the joint family had refused to make the purchase. (His Lordship considered the evidence & proceeded.)

5. The last point urged by learned counsel is that a junior member of a joint Hindu family should, not be allowed to pre-empt. We have heard learned counsel on the point, but we see no reason why a junior member of a joint Hindu family should not be allowed to bring a suit for pre-emption. It is not denied that Deoki Nandan, plff. is a co-owner of the house, which by reason of its vicinage to the house in suit & by reason of certain rights of easement gives the owners of the house a right to pre-empt the house sold. The plff. being a co owner he could, therefore, clearly bring a suit for pre-emption in his own right & this argument would not have been available to the appellant if Deokinandan had offered to pay the price from his own pocket & acquire the property for himself. The reason why the suit was filed by Deokinandan is that he was the person who first came to know of the sale & he, therefore, made the talabs. The fact that he has admitted that the sale consideration would be paid from the coffer of the joint Hindu family & he was pre-empting the property for the benefit of the joint family does not change the situation & does not take away his right to pre-empt the same. In Kartar Singh v. Court of Wards, A. I. R. (27) 1940 Lah. 840, a junior member of a joint Hindu family was allowed to claim preemption even though his name was not recorded in the revenue papers. In our view there is no substance in this point.

6. The appeal, therefore, fails. In view of the fact that the vendee had offered the property to the members of the plff's family on 8-3-1943, on payment of Rs. 7000 but the plff. insisted that the price was Rs. 4000 & it has now been held that the price was really Rs. 7000 & that finding has been accepted by the plff. we think it is a fit case where the parties should bear their own costs in both the Courts.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com