

Saiduddin Vs. Mohiuddin and anr.

Saiduddin Vs. Mohiuddin and anr.

SooperKanoon Citation : sooperkanoon.com/476285

Court : Allahabad

Decided On : Apr-05-1929

Reported in : AIR1929All556

Appellant : Saiduddin

Respondent : Mohiuddin and anr.

Judgement :

1. This is a plaintiff's appeal arising out of a suit for a house situated within a notified area to which the Act does not apply, the second was zamindari property, and the third was another immovable property. It is admitted that the plaintiff had no right to pre-empt the third property. He had no doubt a right under the Act to pre-empt the zamindari property and he claimed to have the right to pre-empt the house under the Mahomedan law. If his claim for the house failed the whole suit must fail because of partial pre-emption. The learned District Judge has held that he performed the second demand under the Mahomedan law validly but that he failed to perform the first demand as required by the Mahomedan law. He has accordingly dismissed the whole suit. The plaintiff stated that when he heard of the sale he immediately said

I am pre-emptor, I possess the right of pre-emption and shall pre-empt.

2. Thereafter he went to the house and took money from his box and went to the vendee and made the second demand on the same day in the afternoon. The

learned Judge seems to think that there was some interval of time between the first and the second demand and therefore the fact of the second demand having been made cannot cure any defect in the making of the first demand.

3. We, however, think that the first demand was perfectly valid. There is no prescribed formula for making the first demand but the words used must be such as to indicate his clear intention to pre-empt. Mr Amir Ali in his book (Muhammadian Law Vol. 1 24th Edn.) has quoted the text of the Hidaya in the following words:

Thus if a person were to say I have claimed my shufa, or I shall claim my shufa, or I do claim my shufa all these are good, for it is the meaning and not the style or mode of expression which is here considered. But if he were to say to the purchaser. 'I am the shaft or pre-emptor' it would be void.

4. In the present case the plaintiff did not merely say that he was the pre-emptor which would be a mere statement of fact, but he added that he would claim pre-emption. In our opinion the whole tenor of his announcement was intended to convey the idea that he was making the demand there and then and would claim pre-emption. He had undoubtedly one year to sue in a Court of law.

5. None of the cases which have been cited before us are therefore in point for here there was a clear assertion of the claim of pre-emption. The plaintiff is accordingly entitled to a decree for pre-emption of the house and the property situated outside the notified area but not to the zamindari property situated within the notified area. He must pay the proportionate price. It is admitted on both sides that about one bigha 8 biswas of land out of five bighas sold are situated within the notified area which the plaintiff cannot pre-empt. It is also admitted that the value of the house is half of the total consideration, that is Rs. 150. It follows that the value of the property situated outside the notified area is Rs. 108. We accordingly allow this appeal and setting aside the decree of the Court below, decree the plaintiff's claim for pre-emption of the house and the property situated outside the notified area on payment of Rs. 258 within six weeks from this date. If the amount is paid within the time allowed the plaintiff will have his costs in all Courts. If the amount is not paid within time the suit will stand dismissed with costs. In all events

the costs in this Court will include fees on the higher scale.

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