

Bindraban Vs. Rajpat Singh and ors.

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Court : Allahabad

Decided On : Jul-02-1930

Reported in : AIR1931All741

Appellant : Bindraban

Respondent : Rajpat Singh and ors.

Judgement :

Sulaiman, J.

1. This is a plaintiff s appeal arising out of a suit for preemption. The vendors first sold the property on 28th August 1923, but before the suit for pre-emption was filed they retransferrad the property to the vendors on 24th July 1924. The suit for preemption was however filed, but was dismissed on 10th November 1924, on the ground that the property had been resold. Subsequently a brother of the vendees, who had resold the property, brought a suit for cancellation of the resale on the ground that the property had been acquired with joint family funds and could not be retranaferred without the consent of all the members. This suit was ultimately compromised on 8th July 1925 and a decree was passed in terms of this compromise to the effect that the property should come back to the families of the vendees. Upon this the plaintiff instituted the present suit for pre-emption, alleging that this was in reality a collusive decree, and the property had in reality been sold for consideration. The findings of the lower appellate Court were not satisfactory,

and we had to send down certain issues for fresh determination. The findings that are now returned make it quite clear that the resale of 24th July 1921, was a genuine transaction, but there is also the finding that the compromise of 8th July 1925, was 'really a sale for consideration in the form of a compromise, and not a genuine compromise.' The learned Judge has further believed the oral evidence to the effect that this compromise was entered into on payment of Rs. 250 to the vendors.

2. His findings therefore amount to this, that it was not merely a compromise of the suit for cancellation brought by the brother of the vendees, but in reality a consideration of Rs. 250 was accepted and the property was transferred to the family of the vendees by the vendors. But it cannot be denied that this was acquired, not by a registered document, but by means of a compromise decree obtained through a Court of law.

3. Under Section 11, Pre-emption Act, a right of pre-emption accrues on the sale of a proprietary interest in land. Section 4, Sub-section (10), lays down that a sale means a sale as defined in the Transfer of Property Act of 1882. In Section 54, T. P. Act, a sale is a transfer of ownership in exchange for a price paid or promised or part paid and part promised. Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards can be made only by a registered instrument.

4. On the finding of the District Judge there is no doubt that this transaction was a transfer of ownership in exchange for a price paid. But the other condition required by the section, that it should be effected by a registered instrument, was wanting. The Transfer of Property Act, nowhere speaks of a sale of immovable property of the value of Rs. 100 and upwards as being effected without a registered instrument but by means of a compromise decree. It therefore seems to us that although the transaction was a transfer for price it was not such a transfer as is referred to in Section 54, T. P. Act. It was therefore not a sale within the meaning of that section.

5. In a case of genuine compromise a Bench of this Court in *Paras Ram v. Neksai* A.I.R. 1928 All laid down that a sale which is preemptible must be strictly a sale as

defined in the Transfer of Property Act, and that a transfer of property effected under a compromise decree of a Court cannot be treated as a sale pre-emptible under the Act. We have pointed out the additional reason that the definition of sale in the Transfer of Property Act requires the existence of a registered document in case of a transfer of property of the value of Rs, 100 and upwards.

6. We must accordingly hold that the plaintiff has no right to pre-empt this property. In view of the finding that the proceedings in the Court were of a collusive nature we direct that parties should bear their own costs throughout.

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