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Rajjo Vs. Lajja

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Court : Allahabad

Decided On : Nov-24-1927

Reported in : AIR1928All204; 114Ind.Cas.43

Appellant : Rajjo

Respondent : Lajja

Judgement :

Lindsay, J.

1. This is a pre-emption appeal and the appellant is the defendant who was impleaded in the Court of first instance as the purchaser of the lands sought to be pre-empted. Her name is Mt. Rajjo.

2. The case of the plaintiff, whose name is Lajja, was based upon a transaction which was entered into on 23rd September 1924, and which is described as a sale. The document was executed in favour of Mt. Rajjo by another lady, Mt. Bharto.

3. It is necessary to explain who these ladies were. The last male owner of the property in dispute was one Harbans who died leaving his mother, Mt. Rajjo, and his widow, Mt. Bharto. It is admitted that after Harbans' death there were disputes between these ladies and eventually Mt. Rajjo, having been ousted from possession of the portion of Harbans' estate of which she had been in occupation

was obliged to file a suit for maintenance against Mt. Bharto, the widow. It is admitted that Mt. Rajjo got a decree for maintenance at the rate of Rs. 150 a year against Mt. Bharto and this maintenance was declared by the decree of the Court to be a charge on the estate of Harbans in the possession of his widow.

4. Musammat Bharto failed to pay the maintenance which was due to her mother-in-law and eventually Mt. Rajjo had to bring a suit. It is admitted that she got a decree and that she had taken out execution and was on the point of enforcing her charge on this property by having it sold. This was the state of affairs on the date on which this transaction now in dispute was entered into.

5. The question which has been raised before us here is a new question which does not seem to have been put before either of the Courts below. It is, however, a question of law and we think it is covered by the third ground of appeal taken in the memorandum. The argument is that this transaction of 23rd September 1924, was not a sale within the meaning of Section 54, T.P. Act, and that consequently no suit for pre-emption could be maintained. It is clearly the law that under the Agra Pre-emption Act (Act 11 of 1922) there is no cause of action for a suit for pre-emption unless there has been either a sale or foreclosure and in the definition clause the term 'sale' is expressed to mean a sale as defined in the T.P. Act, 1882.

6. Turning to the latter definition we find it laid down that 'sale' is 'a transfer of ownership in exchange for a price paid or promised or part paid and part promised,' and the word 'price' is to be understood in this definition as meaning 'money.'

7. If we turn now to the document in question we find the following recitals made by Mt. Bharto, who was purporting to sell the property in dispute. She begins by admitting that she owed money to Mt. Rajjo for maintenance under the decree. The amount of this maintenance so due was calculated up till the date on which the document was written. She says she is to pay this money because it constitutes a charge on her husband's, estate in her possession. She goes on further to say that she stands in need of Rs. 1,000 and that the other party, that is to say, Mt. Rajjo, has agreed to give her this sum of Rs. 1,000. She also recited that the transaction has been entered into 'for the protection of the property,' and

so it is expressed that the consideration for the sale consists of a sum of Rs. 3,197 due in respect of maintenance and a sum of Rs. 1,002 and odd which was to be given in cash before the Sub-Registrar. The total amount, therefore, is made to come up to just about Rs. 4,200. It is plain, however, on a careful perusal of the document that this consideration expressed in terms of money was not the whole of the consideration for the transfer to Mt. Rajjo. It is to be remembered that at the time this deed was executed Mt. Rajjo had a charge over the entire property of Harbans in the possession of his widow Mt. Bharto. It is recited in this deed that over and above the agreement of the parties regarding the money portion of the transaction Mt. Rajjo has agreed to abandon her right as charge-holder over the property of Harbans, and so it must be taken that whatever interest was transferred to Mt. Rajjo under this deed was transferred not solely for a cash consideration consisting of the amount we have just mentioned, but also in consideration of Mt. Rajjo's giving up her right to enforce her charge for maintenance against the property in Mt. Bharto's possession. It is quite clear that no precise money value could be placed upon the charge which Mt. Rajjo held over this property.

8. These being the facts, we think we must accept the contention of the appellant's counsel here to the effect that this transaction of 23rd September 1924, although it is described by Mt. Rajjo in appeal as a sale, was not a sale. In law it was not a sale within the meaning of Section 5.4, T.P. Act., and we think the proper classification of the transaction is to put it in the category of exchanges. Section 118, T.P. Act., says that when two persons mutually transfer the ownership of one thing for the ownership of another neither thing nor both things being money only the transaction is called an exchange. The learned Counsel for the respondent has indeed argued that the right of charge, which Mt. Rajjo had over the property of Harbans, could not be described as a 'thing.' We are not able to accept that contention.

9. In dealing with this case we have referred to a judgment of an Oudh case reported in Vol. 18 of the Oudh Cases, p. 109. That was a case in which there was a transfer of an equity of redemption in return for proprietary rights in certain plots of land subject to the payment of land revenue. The case is not, indeed, in all

respects similar to the one before us, but we think the reasoning which was applied there by the learned Judges applies with equal force to the facts of the present case. There it was held that the transaction was, as a matter of law, an exchange and not a sale, and following the same line of reasoning we come to the same conclusion in the present case and hold that this transaction of 23rd September 1924, was not a sale within the meaning of the Transfer of Property Act. If that is so, there was no cause of action for a suit for pre-emption. We, therefore, allow this appeal and set aside the decree of the Courts below and we direct that the plaintiff's claim do stand dismissed. We leave the parties to pay their own costs in all three Courts.

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