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

Mohammad Najaf and ors. Vs. Badri NaraIn Prasad and ors.

Mohammad Najaf and ors. Vs. Badri NaraIn Prasad and ors.

SooperKanoon Citation : sooperkanoon.com/478495

Court : Allahabad

Decided On : Apr-05-1929

Reported in : AIR1929All658; 118Ind.Cas.719

Appellant : Mohammad Najaf and ors.

Respondent : Badri NaraIn Prasad and ors.

Judgement :
ORDER

1. These three appeals arise out of three suits brought for pre-empting the same sale. The first suit was instituted by the vendor's own brother, Badri Narain. He did not specially allege in the plaint that he was separate from his brother, though he brought a suit to preempt the share transferred by his brother. In the second suit brought by Najaf it was alleged in the plaint that the family was joint but this allegation was generally denied by Badri Narain in his written statement. The question of the jointness of the vendor and Badri Narain was in dispute but the learned Subordinate Judge did not frame any issue on this point. Apparently he has considered this question to be immaterial and he has held that the suit by Badri Narain is maintainable and he has the preferential right. He has tried to distinguish the case of Partap Narain v. Shyam Lal [1920] 42 All. 261, on the ground that there the sale-deed had been executed by the father for legal necessity and not by his brother. In our opinion the ratio decidendi of that case, to quote the words of the learned Judges themselves, was that when the interest of all were joint to allow the plaintiffs to pre-empt would be tantamount to allowing a

man to be both a vendor and a pre-emptor one after the other. If the family is joint then the plaintiff has a proprietary interest in the share sought to be pre-empted. Thus his claim is to pre-empt property which belongs to him and is still undivided. In our opinion therefore it was absolutely necessary to determine the question whether the two brothers were joint or separate.

2. Mr. Upadhiya on behalf of Bhawani Prasad requested that his client should be given an opportunity to produce further evidence in the Court below and have the question of his proprietary title decided afresh. We do not think that he has made out any case for an opportunity to produce fresh evidence. We accordingly send down the following issue essential to the Court below for a finding and report:

3. Were Badri Narain and Radha Rawan joint or separate at the time when the sale-deed was executed? As no specific issue was framed by the Court below the parties will be at liberty to produce fresh evidence on this new issue. The findings should be returned within two months from this date. (On receipt of the finding the following judgment was delivered):

JUDGMENT

4. This is an appeal by Mohammad Najaf and others, defendants, in a suit for pre-emption instituted by Badri Narain Prasad. Badri Narain is the brother of Radha Rawan the vendor and claimed a right of pre-emption. His claim was accepted by the Court below. The Court below held that Badri Narain and his brother were joint and Badri Narain was the elder brother and the karta of the family. The Court below in spite of those findings gave a decree for pre-emption to Badri Narain. In our order of remand dated 5th June 1926 we pointed out that no specific issue had been framed by the Court below as to whether Badri Narain and Radha Rawan were joint or separate. Our attention was not drawn to the statement made by the pleader for Badri Narain before the Court below on 5th November 1923, (paper 36A) that Badri Narain and Radha Rawan the vendor were joint. We have, however, now a clear finding by the learned Subordinate Judge that Badri Narain and Ridha Rawan were joint. Objections have been taken to the finding by Badri Narain but we are of opinion that in this case Badri Narain is bound by the statement of his pleader referred to above. We pointed out that as held in Partap

Narain v. Shyam Lal [1920] 42 All. 261 a person who is the owner of the property sold cannot sue for pre-emption inasmuch as a man cannot be a vendor and a pre-emptor with respect to the same sale. A member of a joint family cannot therefore institute a suit for pre-emption on the sale of joint family property. We are therefore of opinion that this appeal must be allowed and Badri Narain's suit dismissed with costs throughout.

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