
(1887) 11 CAL CK 0003
In the Calcutta High Court

Dewanutulla

APPELLANT

Vs

Kazem Molla and Others

RESPONDENT

Date of Decision : 17-11-1887

Acts Referred:

Citation : (1888) ILR (Cal) 184

Hon'ble Judges : Norris, J;Beverley, J

Bench : Division Bench

Judgement

1. This was a suit to enforce a right of pre-emption under the Mahomedan law. The plaintiff and the defendant No. 1 appear to be joint proprietors of a certain mokurarrri or permanent tenure; and the defendant No. 1 has created a sub-lease in perpetuity of his share ; and it is in respect of that sub-lease that the plaintiff now sues to enforce his right of pre-emption.

2. The suit has been thrown out by the lower appellate Court on two grounds : In the first place the Subordinate Judge holds that inasmuch as the plaintiff and the defendant No. 1 were only the tenants and not the actual proprietors of the land, the doctrine of pre-emption will not apply; and, secondly, that, as the defendant No. 1 did not sell his entire interest in the property out and out, but simply created a lease in perpetuity, the doctrine of pre-emption is not applicable.

3. We have heard Munshi Mahomed Yusoof at great length in regard to what he considers the proper principles of Mahomedan law on this subject; but we are of opinion, as regards the second objection which has been referred to, that the matter is practically concluded by two decisions of this Court Section one in the case of Moorooly Bam v. Huree Bam 8 W.R. 8106; and the other in the case of Ram Golam Singh v. Nursing Sahoy 25 W.R. 43.

4. The learned pleader contends that these decisions are not in accordance with the strict principles of Mahomadan law, and he has further pointed out that they were both passed in cases in which the parties were Hindus. We are of opinion, however, that, as decisions of this Court, they are binding upon us in this matter;

and we observe that the objection as regards the parties being Hindus was specially noticed by Mr. Justice Kemp, who remarks in his judgment that for that reason "he is certainly not disposed to extend the right beyond the strict limits of the Mahomedan law, or beyond the decisions of this Court on that matter." It is clear, therefore, that that fact did not influence the decision of the Court in those cases. Those decisions establish this proposition, that where a co-proprietor does not part with his entire interest by an absolute sale, but merely creates a lease of it, the doctrine of pre-emption will not apply. That being so, we think that the present case is concluded by authority ; and it is not necessary for us to go into the other point, namely, whether the parties, that is, the plaintiff and the defendant No. 1, not being actual proprietors, but merely lessees in perpetuity, had such a milkiat in the property as would entitle either of them to claim the right of pre-emption. On this point we express no opinion.

5. The appeal is dismissed with costs.