

(1938) 10 AHC CK 0015
In the Allahabad High Court

Jagdish Rai and Another

APPELLANT

Vs

Suraj Kumar Singh and Others

RESPONDENT

Date of Decision : 19-10-1938

Acts Referred:

Citation : AIR 1939 All 113

Hon'ble Judges : Iqbal Ahmad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Iqbal Ahmad, J.—This is a defendant-vendees" appeal arising out of a pre-emption suit. The sale deed sought to be pre-empted was executed and registered on 28th February 1935. The suit giving rise to the present appeal was however not filed within one year of the date of registration of the deed and accordingly the vendees contested the suit inter alia on the ground that it was barred by limitation. The plaintiff, on the other hand, claimed the benefit of the provisions of Section 18, Limitation Act, and contended that he was kept from the knowledge of the right to institute the suit by fraud practised by the vendees and that he came to know of the sale within one year of the date of the suit. The Courts below accepted the allegations of the plaintiff on the point and overruled the plea of limitation raised by the vendees. In the present appeal the finding of the lower Appellate Court on the question of limitation is assailed. The property sold was some arazidari property in village Majar Buzurg and 2 karies land in Azamgarh. Majar Buzurg is within the jurisdiction of the Sub-Registrar of Ghosi whereas the Sub-Registrar of Azamgarh had jurisdiction to register a transfer with respect to the land in Azamgarh. The vendor was a resident of Azamgarh and the vendees were the residents of a village in Pargana Ghosi. The sale deed was presented for registration before the Sub-Registrar of Azamgarh and was registered by him. After registration the Sub-Registrar of Azamgarh, according to the rules, conveyed information about the transfer of arazidari in Majar Buzurg to the Sub-Registrar of Ghosi. The plaintiff had no right of pre-emption with respect

to 2 karies land in Azamgarh and he sought to pre-empt only the sale with respect to the arazidari in Majar Buzurg.

2. The plaintiff relied on a variety of circumstances in support of his assertion that the vendees had fraudulently concealed the fact of transfer from him. His case was that the 2 karies land in Azamgarh was of no use to the vendees and they purchased that land simply with a view to get the sale deed registered in Azamgarh and not in Ghosi in which tahsil the plaintiff resides. The plaintiff further alleged that, simply to keep the fact of the sale concealed from the plaintiff, the vendees did not apply for mutation of names till after a year of the date of registration and did not begin to realize rent from the tenants of the arazidar till about one year after the execution and registration of the sale deed. As observed above, the Courts below concluded, from the facts found by them, that the vendees had fraudulently managed to conceal the fact of the sale in their favour from the plaintiff till after the expiry of a year from the date of the registration of the sale deed. In support of this finding the Courts below relied on the following facts : (1) Though the major portion of the property sold lay within the jurisdiction of the Sub-Registrar of Ghosi, the 2 karies land in Azamgarh was included in the sale simply with a view to get the sale deed registered in Azamgarh. (2) The sale transaction was settled on the very day on which the sale deed was executed and registered. (3) After getting the sale deed registered the vendees did not apply for mutation till March 1936. (4) The vendees obtained possession over the endowed property about a year after the execution of the sale deed. (5) The attesting witnesses of the sale deed were not residents either of Majar Buzurg or of the village in which the vendees reside, but were residents of another village.

3. In my judgment the inference drawn by the Courts below from the facts noted above that the vendees were guilty of fraudulent concealment of the fact of sale from the I plaintiff was justified. It is manifest that the 2 karies land in Azamgarh was of no use to the vendees. Indeed it appears that the person, who supervises the execution and registration of the sale deed on behalf of the vendees, never cared even to see the 2 karies land included in the sale. Again, no satisfactory explanation was offered by the vendees about their omission to apply for mutation of names or to take possession of the arazidari property till one year after the execution of the sale deed. All this must have been done by the vendees with some set purpose and the only object of the vendees must have been to keep the plaintiff from the knowledge of the sale till the period of limitation prescribed by Article 10 of Schedule 1, Limitation Act, had expired. In *Sheo Shanker Upadhyaya and Others Vs. Partab Narain Singh and Others*, a Bench of this Court in almost identical circumstances held that the plaintiffs were entitled to the benefit of the provisions of Section 18, Limitation Act. In that case it was found that the sale deed instead of being registered at the tahsil in which the property was situate, was registered in another district; that, in order to get the registration effected, a small plot in another district was included; that the stamp paper was also purchased in the other district several months before the

execution of the sale deed; that the defendant vendees did not even take possession of the property purchased for over a year nor did apply for mutation of names within one year, and the Bench held that these facts justify the conclusion that there was tin active and fraudulent concealment of the sale. The finding on the question of limitation recorded by the lower Appellate Court is no doubt a finding on a mixed question of fact and law, but as I am satisfied that the inference drawn by that Court, from the facts found by it, was justified, I cannot interfere with that finding.

4. The next point argued by the learned Counsel for the appellant was that the plaintiff had not the right to pre-empt the arazidari property. In support of this contention, the learned Counsel drew my attention to the terms of the paragraph relating; to pre-emption contained in the wajibul-arz. According to the custom recorded in, the wajibularz a right of pre-emption is-recognized with respect to "haqiyat zamin-dari" properties. It is contended that the-word "haqiyat zamindari" does not include-arazidari or petty proprietorship and as such the plaintiff had not the right of preemption. This argument is without substance. By Section 5, Agra Pre-emption Act, it is provided that a right of pre-emption shall be deemed to exist in mahals or villages in respect of which any wajibularz. records a custom, contract or declaration, with respect to the right of pre-emption. But according to that Act the incidents-of the right of pre-emption recorded in a particular wajibularz have no force and the classes of pre-emptors are to be determined by a reference to Section 12 of the Act. By that Section a coparcener in a petty proprietary interest has the right of pre-emption. It is not disputed that the plaintiff is co-sharer in the same khewat in which the arazidari in dispute is situated. The plaintiff therefore had the right of pre-emption. For the-reasons given above I affirm the decision of the Courts below and dismiss this appeal with costs. Leave to appeal under the Letters Patent is granted.