

(1929) 05 AHC CK 0006
In the Allahabad High Court

Jhamman Lal and Others

APPELLANT

Vs

Thakur Munshi Singh and Others

RESPONDENT

Date of Decision : 03-05-1929

Acts Referred:

Citation : 118 Ind. Cas. 666

Hon'ble Judges : Sulaiman, J; Pullan, J

Bench : Division Bench

Judgement

1. These two appeals are connected and arise out of consolidated rival pre-emption suits.

2. The only point raised in F. A No. 307 of 1928 is one of consideration. The sale-deed was for Rs. 18,200. Rs. 18,000 were paid before the Sub-Registrar and Rs. 200 were admitted to have been received previously. The profits of this property were admitted to be Rs. 377. The plaintiffs alleged that Rs. 5,000 were actually returned by the vendor to the vendees just outside the Registration Office. A witness named Man Singh was produced who stated that he saw the vendor seated in a motor-car handing over 50 notes of Rs. 100 each to one of the vendees just after the registration. The learned Subordinate Judge has not believed this evidence. Man Singh professes to be a casual witness and it is not likely that such a fraud could have been committed before a stranger. The evidence as regards the return of the part of the consideration, therefore, is unsatisfactory.

3. No doubt the profits of the property are very small having regard to the consideration alleged to have been paid by the vendees. The learned Judge has thought that the profits are rather low but in his opinion there are no sufficient materials on the record to justify him in holding that Rs. 18,200 is not the correct price. We think that on the meagre materials which were before him his finding was not wrong. There was accordingly no occasion for him to enquire into the market-price. First Appeal No. 310 of 1926 is an appeal by the plaintiff. Puran Singh along with another pre-emptor who is now dead, sued on the 16th of

December, 1925, to pre-empt the property sold under a sale-deed dated the 2nd of January, 1925, the ostensible consideration of which was Rs. 18,200. About a week later a rival suit was instituted by Jhamman Lal and others for pre-empting the same property. The Court below has found that Puran Singh has a preferential right as against the rival pre-emptors, but has dismissed the suit on the sole ground that he was in collusion with the vendees. The evidence on which this finding is based consists of the circumstances that he is related to one of the vendees distantly and is indebted to another vendee. There is also the additional fact that his co-pre-emptor who is now dead had stated in the Court below that he considered a previous transaction in favour of the vendees to be one of gift and not of sale but had sued to pre-empt it also in case it was found to be a sale transaction, and further that he was willing to pay the whole price mentioned in the deed. In the connected case we have found that the ostensible price was the true price. These facts by themselves only raise a suspicion that Puran Singh was siding with the vendees. But assuming that he was, that fact is not fatal to the suit. He has a right of pre-emption to claim this property and his claim cannot be defeated merely by showing that he has been instigated by the vendees to put forward this claim. If there is any fraud in contemplation which is perpetrated and discovered hereafter, that would give a separate cause of action to Jhamman Lal and others for recovering the property from him. That a mere collusion is insufficient for the dismissal of a pre-emption suit is clear from the case of *Abhainandan Prasad v. Pashpat Nath Pande* 87 Ind. Cas. 298 : 47 A. 470 : 23 A.L.J. 283 : AIR 1025 All. 449 and the earlier cases cited therein.

4. We dismiss F. A No. 307 of 1926 with costs and allowing F. A. No. 310 of 1926 modify the decree of the Court below in this way that we give Puran Singh a decree who has a preferential right of preemption, on condition of his depositing Rs. 18,200 within two months from this date in the Court below. If he deposits the amount within the time allowed he will have his costs of the first Court from the vendees. If the amount is not deposited within the time allowed his suit will stand dismissed with costs in all Courts. In that event Jhamman Lal and others will be entitled to deposit the amount within a further period of one month from the date of default. If they so deposit they will have their costs against the vendees in the first Court. If they also make default their suit will stand dismissed with costs in all Courts.

5. Inasmuch as F.A. No. 310 of 1926 has arisen out of a plea raised by Munshi Singh and others and the plaintiff has succeeded in spite of that plea we direct that the plaintiff Puran Singh will be entitled to a decree for separate costs of this appeal against Munshi Singh and others provided that he deposits the whole amount within the time allowed.