

(1941) 12 AHC CK 0007
In the Allahabad High Court
Case No : Second Appeal No. 1527 of 1939

Surendra Bahadur Singh

APPELLANT

Vs

Rajendra Bahadur Singh and others

RESPONDENT

Date of Decision : 01-12-1941

Acts Referred:

Citation : (1941) 12 AHC CK 0007

Final Decision : Dismissed

Judgement

Iqbal Ahmad, C.J. and Dar, J.—This is a vendee's appeal arising out of a pre-emption suit. The sale sought to be pre-empted was effected by means of a registered instrument on the 23rd of June, 1934.

2. The suit for pre-emption giving rise to the present appeal was filed on the 1st of June, 1935. The vendee Appellant contested the suit. On the date fixed for the final hearing of the suit vendee applied for adjournment but his application was refused and the trial Court then proceeded to record the Plaintiff's evidence. The vendee's witnesses were not present with the result that the vendee could not produce the evidence that he wanted to produce. The trial Court decreed the suit on the 15th of January, 1936.

3. The vendee filed an appeal in the lower appellate Court. The lower appellate Court allowed the appeal and remanded the suit to the trial Court on the 22nd of February, 1938, with the direction to record the evidence of the vendee's witnesses and then to decide the case.

4. After the remand the trial Court again passed a decree in the Plaintiff's favour on the 11th of July, 1933 and this decree of the trial Court was affirmed by the lower appellate Court on the 27th of October, 1939. The present second appeal is against the last mentioned decision of the lower appellate Court.

5. It appears that the vendee had, prior to the sale sought to be preempted, purchased a share in the mahal in which the pre-empted share is situated at an auction sale on the 22nd of August, 1933. The confirmation of the sale was

unduly delayed and it was eventually confirmed on the 20th of October, 1936.

6. After the remand by the lower appellate Court the vendee contested the suit on the ground that as he had become a co sharer in the mahal by virtue of the auction purchase made by him the Plaintiff was not entitled to a decree. This contention of the vendee was based on Section 65 of the Code of Civil Procedure which runs as follows:

Where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

7. It was urged on behalf of the vendee that in view of Section 65 he must be deemed to have become a co-sharer in the mahal on the 22nd of August, 1933, that is, prior to the sale sought to be pre-empted by the Plaintiff and as such the suit for pre-emption was not maintainable. In the alternative it was contended on behalf of the vendee that even if his title to the property purchased by him at the auction sale be deemed to have accrued on the 20th of October, 1936--the date of confirmation of sale--the Plaintiff was not entitled to a decree inasmuch as the trial Court had not after the remand pass (sic) decree in the Plaintiff's favour till that date.

8. Both these contentions of the vendee were overruled by the trial Court and by the lower appellate Court and in our judgment, rightly. As already stated, the suit giving rise to the present appeal was filed on June 1, 1935 and the auction purchase made by the vendee had not been confirmed till that date. The vendee had therefore not acquired an indefeasible interest in the mahal on the date of the institution of the suit. He could not therefore take advantage of the provisions of Section 20 of the Agra Pre-emption Act which inter alia provides that no suit for pre-emption shall lie where, prior to the institution of such suit, the purchaser has...acquired an indefeasible interest in the mahal which, if existing at the date of the sale or foreclosure, would have barred the suit.

9. The rights of the parties were governed by Section 19 of the Act which runs as follows:

No decree for pre-emption shall be passed in favour of any person unless he has a subsisting right of pre-emption at the time of the decree, but where a decree for pre-emption has been passed in favour of a Plaintiff, whether by a Court of first instance or of appeal, the right of such Plaintiff shall not be affected by any transfer or loss of his interest occurring after the date of such decree.

Now the original decree by the trial Court in favour of the Plaintiff was passed on January 15, 1936. Till that date the auction purchase made by the vendee had not been confirmed and therefore it could not be said on January 15, 1936, that the vendee had become a co-sharer in the Mahal. The auction purchase was no doubt confirmed subsequently, but the rights of the parties had to be determined

with reference to the date on which the trial Court passed a decree in the Plaintiffs favour and that date was, as already stated, 15th of January, 1936. As on that date the vendee had not acquired an indefeasible interest in the mahal the Plaintiff was undoubtedly entitled to a decree. The mere fact that the decree of the trial Court dated the 15th of January, 1936, was set aside by the lower appellate Court and the case was remanded to the trial Court did not, in our judgment, destroy the Plaintiff's right of pre-emption. The decree referred to in Section 19 is the decree originally passed by the trial Court in favour of the Plaintiff and not the decree that may, in consequence of an order of remand by an appellate Court, have to be again passed by the trial Court in favour of the Plaintiff. It is clear from Section 19 that once a decree in favour of the pre-emptor is passed by the trial Court the subsequent loss of right of pre-emption by the Plaintiff has no effect on his claim. The cardinal date for the determination of the rights of the parties was the date on which the trial Court originally passed the decree in the Plaintiff's favour and that date was the 15th of January, 1936. Till that date the auction purchase made by the vendee had not been confirmed and therefore the Plaintiff's right to pre-empt the sale was intact on that date. The Courts below were therefore right in decreeing the Plaintiff's suit. We accordingly dismiss this appeal with costs.