

PRIVY COUNCIL

Pateshwari Partab Narain Singh

Vs.

Sitaram

P.C.A Nos. 29, 30 and 31 of 1928

(Lords Blanesburgh, Tomlin Thankerton, Sir George Lowndes and Sir Binod Mitter JJ.)

05.07.1929

JUDGMENT

SIR GEORGE LOWNDES

1. These three consolidated appeals raise a somewhat unusual question under the law of preemption in Oudh. The facts are as follows :

In December 1872, the Secretary of State made a grant of a large tract of waste land in the Gonda district to one William Cooke. The land was described in the deed of grant as situated in the village of Agya, but under subsequent settlement proceedings it seems to have been constituted a separate "village" known as Cookenagar Grant. The word "village" in this connexion, however, denotes little (if anything) more than a revenue unit. In 1924, when the transactions which led to this litigation took place, the original grantee was dead, and the estate was vested under the provisions of his will in ten persons living in England, and was managed on their behalf in India by a Mr. Stern. The owners being desirous of disposing of the property, it was divided up into a number of blocks, which were offered for sale locally by Mr. Stern. Block No. 19 was purchased by the appellant, the Raja of Basti; blocks Nos. 7 and 9 by Dargahi (now deceased and represented by Sita Ram and Madho) and Mata Prasad, the respondents in two of the appeals ; and blocks Nos. 10, 13,15 and 29 by Raja Mohammad Mumtaz Ali, the respondent in the third appeal. It is not now disputed that the conveyance of block No. 19 to the appellant was executed and registered on 9th June 1924, before any of the other sales were formally completed, though the conveyance of block No. 7 to Dargahi and Mata Prasad was executed on the

same day, but at a later hour. The sale to Raja Mohammad Mumtaz Ali was not completed till 18th June 1924, and the second sale to Dargahi and Mata Prasad (block No. 9) not till 21st July following.

2. Under these circumstances the appellant claimed to pre-empt the other blocks, and filed three suits in the Court of the Subordinate Judge of Gonda against their several purchasers to enforce his claims. The two suits against Dargahi and Mata Prasad were tried together and one judgment was delivered in both, the Subordinate Judge holding that the appellant's claim in respect of block No. 7 was not established, but that his claim in respect of block No. 9 was. The one suit was therefore dismissed, and in the other a decree for pre-emption was made upon the usual terms. The third suit against Raja Mohammad Mumtaz Ali was tried by the same judge, but separately, and was also dismissed. Appeals were filed by the unsuccessful parties in each of the three cases to the Chief Court of Oudh. The appeals were apparently heard together, and were decided by one judgment, the result of which was that the appellant, the Raja of Basti, was defeated in all three cases, his two appeals being dismissed, and the appeal of the respondent purchasers of block No. 9 being allowed.

3. The appellant before this Board has maintained his right to preemption in all the three cases under the provisions of Chap. 2, Oudh Laws Act, 18 of 1876.

4. On the argument of these appeals a number of questions have been raised of considerable complexity and depending upon the intimate construction of this somewhat abstruse enactment. Their Lordships, however, are satisfied that the appellant must fail in each of them on the threshold of the Act, having regard to certain findings of fact in which both the Courts in India have concurred.

5. The sales in question were all carried out on behalf of the vendors by Mr. Stern. The blocks were in the market for some time. They were clearly delineated upon separate plans, and separate khasras and jamabandis were prepared for each. The Subordinate Judge held that the appellant had procured a list of all the blocks, containing the prices; that he knew, that they were all in the market and could be had for these prices, but that he definitely refused to purchase any but block No. 19, which was adjacent to his own estate. The appellate Court came in effect to the same conclusion. They held that the appellant told Mr. Stern that he wished to purchase block No. 19 only and that he did not wish to purchase any other block. The oral agreement for sale with Raja Mohammad Mumtaz Ali was entered into some time prior to the agreement with the appellant, but both Courts held that when he refused to purchase any of the other blocks he was aware of the agreement with Raja

Mohammad Mumtaz Ali and acquiesced in it.

6. Upon this state of facts their Lordships are clearly of opinion that, assuming that the prior completed purchase by the appellant would under other circumstances, have given him the right of pre-emption in respect of the blocks in suit, he must be taken by his conduct to have waived this right, and that it would be inequitable to allow him now to re assert it. This principle has been recognised in previous cases by the Oudh Courts : see *Bhagwat Singh v. Nazir Husain* [1902] 5 O. C. 395, *Bank of Upper India v. Alopi Prasad* [1907] 10 O. C. 257 and *Hanuman Singh v. Adiya Prasad* [1919] 22 O. C. 323 : 54 I. C. 520, and it has been applied to some extent at all events by the judgment of the Subordinate Judge in the present case.

7. Having come to this conclusion, their Lordships will only touch briefly upon certain other questions which have formed the subject of argument before them.

8. The decision of the Chief Court ultimately turned upon the question whether the appellant was by reason of his purchase a member of the village community of Cookenagar Grant, inasmuch as under section 7, Oudh Act the right of pre-emption is only to be presumed to exist in "village communities." This expression is not denned in the Act, and no evidence was given in any of the suits as to the existence of a "village community" in Cookenagar Grant. It was, however, contended for the appellant that, upon the death of Cooke, who was till then the sole owner of the village, the ten persons living in England who were his devisees became a village community within the meaning of the Act, and that as soon as the appellant purchased block No. 19 he became a member of that community. It may be that, as appears to have been held in other cases by the Oudh Courts, only persons having an interest in the village lands should be deemed to be members of the community though their Lordships are not prepared in the present case to affirm the Correctness of this proposition; but it by no means follows from this that Cooke's devisees merely by reason of an interest in the land so acquired should be assumed to constitute a village community which was not shown to exist apart from themselves.

9. Another question which was the subject of considerable discussion before this Board turn upon the possible competition between the rights acquired by a contract for sale and those attaching under the Oudh Act to a completed conveyance. It was found by the Courts in India that the agreement for sale of Raja Mohammad Mumtaz Ali's plots was prior in date to the agreement for sale of block No. 19 to the appellant, but that the registered sale-deed of the appellant preceded by some ten days the

completion of Raja Mohammad Mumtaz Ali's purchase. Both Courts were of opinion that under these circumstances the appellant had no right of pre-emption as against Raja Mohammad Mumtaz Ali. It may be that in such a case there is a direct conflict between the statutory rights attached under Chap. 3, Transfer of Property Act to an agreement for sale, and the right of pre-emption conferred by the Oudh Laws Act, and that this question may need further consideration at some future time. Their Lordships do not think it necessary to come to any conclusion upon it in these appeals.

10. The matter of notice under Section 10 of the Act was also discussed. It was admitted that no formal notice of his proposal to sell any of the plots in suit was given by Mr. Stern, but in their Lordships' view this cannot help the appellant. His refusal to purchase any of the other plots, and his acquiescence in the sale to Raja Mohammad Mumtaz Ali may well have induced Mr. Stern to believe that the statutory notice was unnecessary, and if it had been given it seems clear that the present suits would have been barred by Section 11.

11. For the reasons already stated, their Lordships are of opinion that the present appeals must fail, and they will humbly advise His Majesty that they should be dismissed. The appellant must pay the costs of both sets of the respondents.

Appeals dismissed.