

ALLAHABAD HIGH COURT

Naunihal Singh

Vs.

Ram Ratan

(Henry Richards, C.J. and Rafique, J.)

25.07.1916

JUDGMENT

Rafique, J.

1. This appeal arises out of a suit for preemption. It is desirable to refer shortly to the circumstances, which are somewhat peculiar. The property belonged to a gentleman named Matwatang Dhaoj Prasad Singh. He was possessed of a considerable estate which was heavily indebted, and the estate was taken over by the Court of Wards. The sale was a sale by the Court of Wards. There is abundant evidence to show that for no less than two years prior to the sale, efforts were being made to sell a substantial portion of the estate including the property now in question, in order to liquidate the debts of the ward. There is evidence, which we have no hesitation in believing, that the intention to sell was published in the fullest manner possible. We know ourselves that it is the practice of the Court of Wards to publish the intention of making such sales. It is their duty to do so. Their object is to gain as high a price as they possibly can for the property of the ward. The obvious way of attaining this object is to have as many bidders as possible. Without for the moment referring in detail to the evidence, we have not the least hesitation in holding that all the co-sharers, including the plaintiff in the present suit, knew perfectly well that the property was in the market, and that he knew that all he had to do, if he wanted to purchase the property, was to make an application for that purpose to the Court of Wards. We will now consider for a moment the conduct of the plaintiff after the sale. The sale-deed was executed on the 7th of April 1913. It was registered on the 21st of April of the same year. The present suit was not instituted until the 16th of April 1914, that is to say, more than a year after the sale and almost a year after the registration. In fact if the suit had been five days later it would have been barred by limitation. One would have expected, if the plaintiff had really wished to purchase this property and had been in a position to do so, he would, immediately after the sale, have complained to the Collector or the manager of the estate that he had a right to purchase the property, and that the sale had been carried out without his knowledge. He did nothing, of the kind. A number of witnesses have been produced, who prove that Ram Ratan amongst other persons was asked to purchase this very property and that he declined to do so.

The learned Subordinate Judge has not believed these witnesses. We cannot agree with him. These witnesses for the most part were quite disinterested. They did not gain the property or any benefit by the purchaser being allowed to retain his purchase. A witness of the name of Avadh Bihari Lal was produced on behalf of the plaintiff. His evidence is somewhat shifty. He tried in a half-hearted way to state that no instructions were given to a man called Babu Ram Saran, a sarbarahkar of the Court of Wards, to go round the village and enquire for would-be purchasers, but in cross-examination he had to admit that the Court of Wards had intended to sell the property from the year 1910, and that letters were sent to all the Tahsildars to procure purchasers. He also had to admit that the Tahsildars issued notices to all the big zemindars and the notices were on the record of the Court of Wards. He had further to admit that the Tahsildars had reported the names of persons who were ready to purchase some of the property, but that the name of the plaintiff Ram Ratan was not amongst them. He also had to admit that persons made applications direct to the Court of Wards stating their desire to purchase portions of the property, and that in application was received from Ram Ratan. This is the plaintiff's own witness. The witnesses for the defence deposed to the fact of the publication of the intention to sell, and that the intended sale was proclaimed by beat of drum in different villages. Bearing in mind the practice of the Court of Wards and the fact that the defendant's witnesses are, as we have already said, disinterested, we certainly consider that there is no valid reason why their evidence should not be believed both as to the publication of the intention to sell and also as to the fact that Ram Ratan was approached and declined to purchase.

2. It is argued that even if Ram Ratan knew that the property was for sale and even if he had declined to purchase the property, nevertheless it should have been offered to him as soon as the bargain was concluded with the vendee, and that inasmuch as it is not alleged that this was done, he is still entitled to maintain the present suit. We think that this is a most inequitable and unsound contention. The custom alleged in the present case is that where a co-sharer wished to sell his property he should first offer it to the other co-sharers. In our opinion if a co-sharer, in a village in which such a custom exists, wishes to sell his property and goes to the other co-sharers and informs them of his desire to sell and they decline to purchase on the ground that they have not the means or any other similar ground, the vendor is at liberty, without violating the custom, to sell to an outsider. No doubt the position might be different if, when informed of the intention to sell, the co-sharer intimates that he is ready to buy at a price. In such case it might be the duty of the vendor to mention a price to his co-sharer and not to sell the property to any one else at a lesser price. In the present case we hold that Ram Ratan having declined to purchase the property, the Court of Wards was absolved from any obligation to afterwards offer the property to him and it could be sold without any violation of the custom. We may mention in this connection that the property was practically sold for the price mentioned to Ram Ratan by the sarbarahkar. The price he mentioned was L 6,000; the actual price paid was L 5,980.12.0.

3. We allow the appeal, set aside the decree of the Court below and dismiss the plaintiff's suit with costs in all Courts, including in this Court fees on the higher scale.

