

LAHORE HIGH COURT

Kanshi Ram Sharma

Vs

Lahori Ram

(Addison, J.)

19.10.1937

JUDGMENT

Addison, J.

1. This is a second appeal in a pre-emption suit by the plaintiffs, Kanshi Ram and Hans Raj, who form a joint Hindu family, the manager being Kanshi Ram. The only question, involved in the appeal, which was argued, was that of waiver. It had been pleaded by the defendants that the house was offered to Kanshi Ram and that he refused to purchase it; this amounting to waiver. The sixth issue was therefore struck on this question, namely whether the plaintiff was asked to purchase and was estopped from suing? The right of pre-emption claimed by the plaintiffs was under Section 16 (Sixthly), Punjab Pre-emption Act 1 of 1913, that is they claimed as persons who owned immovable property contiguous to the property sold. It was not counter-pleaded in the trial Court by the plaintiffs that Hans Raj would not be estopped from suing merely because his brother was estopped. It seems then to have been considered that if Kanshi Ram had waived his right to pre-empt, the suit must fail. Accordingly the trial Judge dismissed the suit, holding that waiver was established. There was an appeal to the District Judge, when it was contended before him for the first time on behalf of Hans Raj that the evidence and finding simply amounted to this, that Kanshi Ram, one of the appellants, had waived his right of pre-emption. The District Judge therefore remanded to the trial Court an additional issue as to whether the waiver of the right of pre-emption by Kanshi Ram operated as waiver by both the plaintiffs. Thereafter, the District Judge held that the two brothers constituted a joint Hindu family holding the contiguous property from which they derived their right to sue and other property as coparceners of that family of which Kanshi Ram was the manager and that, as the manager had waived his right to pre-empt, Hans Raj was also estopped and had no separate right of suit. Against this decision this appeal has been preferred.

2. It has now been settled by this Court in *Kara Sanal v. Muhammad Tufail*¹ and *Sardar Muhammad v. Khuda Bakhsh*² that the right of pre-emption can be waived by a pre-emptor when property is offered to him for sale before a definite contract of sale with any other person has come into existence and such person has refused to purchase the property or intimated his intention of not purchasing the property. There

¹ AIR (1929) Lah 265

² AIR (1935) Lah 884

is no doubt therefore that Kanshi Ram is estopped.

3. There remains the question whether Hans Raj can pre-empt in the circumstances described. It was stated in *Ishri Parshad v. Basheshar Nath*³ that where the property, on the ownership of which the right to pre-empt is based, belongs to a joint Hindu family the right of pre-emption vests under Clause 7 of Section 13, Pre-emption Act 1905, in every co-sharer in such property. It seems to us that the word "co-sharer" is not the right word to use as regards the joint property of a joint Hindu family. The members of the family are coparceners but have no "share" until there is disruption of the family. Besides, though the headnote of the authority mentioned refers to the Punjab Pre-emption Act 1905, the case was apparently one governed by the Punjab Laws Act 1872. We were also referred to *Sat Narain v. Behari Lal*⁴, but that case does not purport to decide the question before us.

4. It was held by the Court of the Judicial Commissioners, Oudh in *Gajadhar v. Lal Bebari*⁵, that an undivided member of a joint family cannot, apart from the other members of the family, unless he represents the whole family as karta, claim to be a cosharer within the meaning of Section 9, Oudh Laws Act. The expression "cosharer" in that Section means a juristic person and not merely an individual who collectively with other individuals constitutes a single juristic person. A converse case was decided in this Court and reported in *Sukha Ram v. Kotu Ram*⁶ It was held there that the sons in a joint Hindu family cannot maintain a suit to pre-empt a sale of joint family property, made by the father as managing member of the family, and which is not alleged to be otherwise than for necessity. Here again the idea is that the family is one until separation. A case on all fours with the present is *Suraj Prasad v. Oudh Behari*⁷, where it was held that the refusal of a karta of a joint Hindu family to purchase the property sought to be pre-empted bound the coparceners as well and they could not claim a separate right of preemption. This principle also obtains some support from the decision of their Lordships of the Privy Council in *Idris v. J. Skinner*⁸ The occupancy tenants of a village sued for pre-emption in respect of the sale of the village by the proprietor. It was found that two of the body of tenants, acting on behalf of the whole village, introduced the vendees to the vendor's agent as prospective purchasers, telling him that an agreement had been come to whereby those vendees should pay the money and acquire the property, which should then be held as three-quarters for the vendees and one quarter for the tenants. Thereafter the tenants sued to pre-empt the sale, but it was held that they were estopped as two of the tenants, acting for the village, had helped the vendees to have the purchase effected. It was held further that there was no need that the two representatives of the whole village should have held powers of attorney and that it would require very strong and cogent reasons to compel the Court to hold so extremely reasonable arrangement bad simply because some of the villagers happened to be infants.

5. On the authorities therefore, we hold that a waiver by the manager of a joint Hindu family operates as a complete waiver by all the members of the family. That is the only reasonable view which can be taken. The appeal accordingly fails and is

³(1908) 36 PR 1908

⁵ AIR 1925 Oudh 352

⁴ AIR 1925 PC 18 : 84 Ind. Cas. 883 : 1925-21-LW 375

⁶(1922) 67 IC 76

⁷ AIR 1931 All 216

⁸ AIR (1918) PC 154

dismissed. We however make no order as to costs of this Court.

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