(1877) 12 AHC CK 0001

Allahabad High Court

Case No: None

Inam Begam		APPELLANT
	Vs	
Abadi Begam		RESPONDENT

Date of Decision: Dec. 3, 1877

Citation: (1875) ILR (All) 521

Hon'ble Judges: Spankie, J; Oldfield, J

Bench: Division Bench

Judgement

Spankie, J.

The second plea, too, cannot be maintained. The first Court found on the evidence of five witnesses that, immediately on hearing of the sale, the plaintiff fulfilled the conditions of the Muhammadan law by immediately asserting her claim and by affirmation before witnesses. The Judge affirmed this finding. The claim was made by the plaintiff''s husband, but nothing was shown to us to support the plea that a claim so made was invalid. On the contrary, it appears to us that an agent or manager, as in this case, the husband for his wife, may legally assert a pre-emptive claim. The point was not seriously disputed before us.

2. It was orally argued that the Judge had erroneously bold that a refusal before a sale, which was all that could be proved in this case, does not vitiate a right of pre-emption advanced by the purchaser after the sale, provided there is no delay.

3. The plea was not taken in the memorandum of appeal, and it is doubtful bow far any refusal to purchase has been established. We may, however, observe that, if anything is proved, it does not go beyond a refusal of the plaintiff to purchase at the rate demanded by the vendor, on the ground that the actual sale-price was less than that demanded from the pre-emptor. The plaintiff offered to deposit any sum that the Court found to have been the actual purchase-money, and has all along asserted that the sale-price was Rs. 130 and not Rs. 200. As we read the Muhammadan law on this point, we find that the right of pre-emption is void if the pre-emptor relinquishes the purchase in plain terms, and any indication of acquiescence in the

sale to another would also vitiate a claim after the sale on the part of the pre-emptive claimant. But a claim relinquished upon misinformation of the amount of sale-consideration, or of the property sold, may he resumed when the real facts become apparent. Whether this be so or not, we should, where there bad been no absolute surrender or relinquishment of a claim, but where the refusal was simply in consequence of a dispute as to the actual sale-consideration, hesitate to bold that, after the completion of the purchase by a stranger, the light of pre-emption could not he resumed. It would be our duty to follow the dictates of equity. It would neither be just nor equitable to lay down so hard a rule, as that a refusal to purchase before the actual completion of a sale to another would in all cases bar a subsequent claim, when the right of pre-emption accrues after the completion of the purchase.