

Khan Muhammad Khan Vs Zamani Begam and Asghari Begam

Court: Allahabad High Court

Date of Decision: Nov. 21, 1923

Citation: (1924) ILR (All) 142

Hon'ble Judges: Sulaiman, J; Lindsay, J

Bench: Division Bench

Judgement

Lindsay and Sulaiman, JJ.

This is a defendant's appeal arising out of a suit for pre-emption. The right of preemption was originally based

both on an alleged custom and on the Muhammadan Law. Both the courts below have found that the existence of custom has not been established

in this case. That finding is in no way challenged in appeal and must, therefore, be accepted as final.

2. On the question of the applicability of the Muhammadan Law, the court of first instance was of opinion that the demands required by that law

were not fully complied with. It accordingly dismissed the suit. On appeal, the learned District Judge has come to a contrary conclusion and has

held that there has been no flaw in the performance of the necessary conditions.

3. In appeal four points have been urged as showing that the demands were not in accordance with the requirements of the Muhammadan Law.

4. The first is that the demands were made before the actual registration of the sale-deed in question.

5. The second is that there was no demand made to the vendee.

6. The third is that there was no reference to the first and second demands. And the last point is that the invocation of the witnesses was not made

in the proper way.

7. It would be convenient to dispose of the last three points first. It is not suggested that possession of the property had passed to the vendees. It

is, therefore, obvious that the second demand made to the vendor was quite sufficient. We have had the statements of the witnesses read to us and

we are satisfied that there was in the second demand both a reference to the first demand and there was also an invocation of the witnesses. None

of these three points, therefore, have any force.

8. With regard to the first point it has been strongly contended on behalf of the defendant that inasmuch as under the present law no sale of

immovable property of the value of over Rs. 100 can be completely effected except under a registered deed, the demands were premature as they

were made before the sale was perfected by registration.

9. This contention, however, in view of the pronouncement of the Full Bench in the case of Begam v. Muhammad Yakub ILR (1894) All. 344, is

without any force.

10. In an earlier Full Bench case, Janki v. Girjadat ILR (1885) All. 482, it had been Held that a right of pre-emption may, in certain circumstances,

arise even in the absence of a registered sale-deed.

11. In the Full Bench case, Begam v. Muhammad Yakub ILR (1885) All. 482, the learned Chief Justice, who delivered the leading judgment in the

case, at page 347, after pointing out the various conditions required in order to give rise to a right of preemption, remarked:

This leads me to the conclusion that what was considered in Muhammadan Law to be a sale upon which a right of pre-emption would arise

included an offer unconditional on the part of the vendor and made by him to the purchaser, or intending purchaser, to sell, and accepted by the

intending purchaser, although the offer and acceptance were subject to the exercise of an option by the intending purchaser, the exercise of which

option was not a necessary condition to the right of pre-emption arising. What apparently was considered as giving a right of pre-emption was

either an absolute out-and-out sale, as English lawyers understand the term, or a contract of sale subject to a right of option in the intending

purchaser which deprived the intending vendor of any right to refuse to complete the sale, should the intending vendee exercise his option to

purchase.

12. This exposition of the law was accepted by all the other Judges except Banerji, J., who delivered a dissenting judgment. This case, therefore,

so far as this Court is concerned, is conclusive authority for holding that a right of pre-emption arises not only when an out-and-out sale has been

completed but also when a complete contract of sale (without any option, in the vendor) has been made.

13. The learned advocate for the defendant wanted to invite our attention to rulings of the Calcutta High Court which laid down a contrary

proposition of law. On the other hand, it was pointed out by the learned vakil for the respondents that the Bombay High Court has taken not quite

the same view. In view of a clear pronouncement by a Full Bench of this Court, which has been followed for so many years, it is unnecessary for

us to consider the cases of the other High Courts. That Full Bench case is binding on us.

14. In view of this interpretation of law, it is quite clear that the demands which were made soon after the execution of the sale-deed though before

its actual registration were by no means premature and defective.

15. The result, therefore, is that the appeal fails and is hereby dismissed with costs.