

Sabodra Bibi Vs Bageshwari Singh and Another

Court: Allahabad High Court

Date of Decision: May 27, 1915

Citation: (1915) ILR (All) 529

Hon'ble Judges: Henry Richards, C.J; Tudball, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Henry Richards, C.J. and Tudball, J.

This appeal arises out of a suit for pre-emption. Portion of the property was situate in one mahal and

portion in another. The plaintiff claimed preemption of the whole of the property in Harballampur but only a portion of the property in Mirganj. He

said that the vendor was only entitled to a much smaller share in Mirganj than that which he purported to sell. He added to his plaint a, statement

that if the court found that the vendor was really entitled to all the property in Mirganj which he purported to sell, then he was willing to pre-empt

that also. Both the courts below have dismissed the plaintiff's suit on the ground that he did not seek preemption of the entire property. In our

opinion this decision was correct. A pre-emptor is not entitled in a pre-emption suit to put the vendor on proof of his title to the property which he

purports to sell. The principle of pre-emption is substitution. A pre-emptor is, therefore, bound to take the title which the vendee was ready to

take. He is not entitled to say to the vendor, I will take all the property to which you prove you have a title but I will not take property which you

fail to prove belongs to yourself. We need hardly say, that we do not decide that a vendor is entitled fraudulently to insert property, to which he

has no title, in the sale deed for the purpose of inflating the price or otherwise fraudulently to defeat pre-emption. In the present case it is perfectly

clear from what took place in the court below that the vendor has (or bona fide thinks he has) some title not necessarily a perfect title, to the

property which the plaintiff in the present suit claims belongs to his son, We dismiss the appeal with costs.