
(1872) 08 CAL CK 0011

Calcutta High Court

Case No: Special Appeal, No. 375 of 1872

Toral Komhar

APPELLANT

Vs

Mussamat Auchhi and
Another

RESPONDENT

Date of Decision: Aug. 10, 1872

Final Decision: Dismissed

Judgement

Bayley, J.

We are of opinion that this special appeal must be dismissed with costs. There is a clear finding of fact by the lower Appellate Court that the plaintiff had the option of purchasing the property as pre-emptor, and that, having that option, he deliberately refused to avail himself of it. It is equally clear, that after he so refused to purchase, the defendant No. 1, after due enquiry as to the vendor's title, and being satisfied that there was no impediment to his title, purchased that property. It is urged in special appeal that, under the Mahomedan law of pre-emption, although a person having that right may have refused to purchase, yet his title to purchase is not extinguished until the property has actually passed into another person's hands; and the case of Sheikh Jehangir Baksh v. Lala Bhikari Lal 6 B.L.R, 42 is cited in support of this contention. That case, however, has not its facts the same as this. There it was doubted whether there was a clear refusal on the part of the pre-emptor; and although it was incidentally laid down that the pre-emptor's title is not extinguished until the property has actually passed into another's hands, yet the principle of equity raised before us in this case was in no way considered or touched upon by the learned Judges in that case. The case of Sheikh Jehangir Baksh v. Lala Bhikari Lal 6 B.L.R, 42, therefore, is neither a precedent in support of the special appellant's contention, nor in conflict with the case of Sheo Tuhul Singh v. Mussamut Ram Kooer¹, There is, therefore, no necessity for our referring this case to a Full Bench as asked by the special appellant's pleader. On the other hand, the principle of equity is clear that, when a pre-emptor, on being asked to purchase a property, deliberately refuses to exercise his right of pre-emption, and after his refusal, a new purchaser, after careful enquiry, and having satisfied himself that there is no other impediment to his

making the purchase, purchases that property, the pre-emptor should not be allowed to turn round and take away the property from the purchaser's hand on the accidental rule of Mahomedan law that his title to purchase is not extinguished-until the property has actually passed.

2. In this view I would dismiss this special appeal with costs.

Mitter, J.--

3. I am entirely of the same opinion. No authority has been cited to us from the Mahomedan law to show that a pre-emptor can enforce his right of pre-emption, even after having positively refused to purchase the property in which he claims that right, but which after his refusal has been purchased by a third party. But whatever may be the rule of Mahomedan law on this point, it appears to me quite clear that we should not allow the plaintiff in this case to commit a fraud upon the defendant by asking the latter to give up to him a property which he has purchased on the strength of the plaintiff's own refusal to exercise his right of pre-emption. The case falls within the ordinary principle of estoppels, and I think that the plaintiff in this case is precluded by his own conduct, which has been acted upon by the defendant, from impugning the title by purchase acquired by the latter.

¹ W.R., Juny. to June 1864, 311