
(1870) 03 CAL CK 0019

Calcutta High Court

Case No: Special Appeal No. 1794 of 1869

Ram Charan

APPELLANT

Vs

Narbir Mahton and
Another

RESPONDENT

Date of Decision: March 7, 1870

Final Decision: Dismissed

Judgement

Norman, Officiating C.J.

1. This is a claim for pre-emption on the ground of vicinage. The evidence shows that when the pre-emptor heard the news of the sale, he was at his own house, which was adjacent to the lands whereof pre-emption is claimed; and that he went from his own house to the land in dispute, and then made the demand. The Judge holds that though the delay was very short, on the plaintiff's own evidence it appears that there was not an instant demand; and, therefore, that the preliminary formality of tulub-mawasabat had not been performed according to the Mahomedan law, and accordingly be dismissed the suit. From that decision there is an appeal. We think it clear that the decision of the Judge is correct.

2. In Macnaghten's Precedents of Mahomedan Law, page 187, it is said: The right of pre-emption cannot exist without proof of the tulub-mawasabat, or immediate claim. For this there is no specific period assigned, but all authorities agree in declaring the necessity of its being made by the person claiming the right to pre-emption on the instant of his becoming acquainted with the sale, without the least delay. This is absolutely requisite, so much so that if any delay occur, the claim of J pre-emption is void." In the Hedaya, Vol. III, page 569, it is said that the first claim of shaffa "is termed tulub-mawasabat, or immediate claim, where the shafee prefers his claim the moment, he is apprised of the sale being concluded; and this it is necessary that he should do, insomuch, that if he make any delay, his right is thereby invalidated; for the right of shaffa is but of a feeble nature, as has been already observed; and " the prophet, moreover, has said the right of shaffa is established in him " who prefers his claim without delay." In the

following page it is shown that the tulub-mawasabat may be good notwithstanding that certain expressions, such as Praise be to God," or there is no power or strength but what is derived from God," or Gad is pure," and the like, may be interposed between hearing of the sale and making the demand; or if the shafee, on receiving news of the sale, asks, "who is the purchaser and how much is the price?" But the whole chapter on pre-emption in the Hedaya shows that no other delay of any kind will be allowed. Again in Baillie's Mahomedan law, page 481, it is said: By tulub-mawasabat is meant that when a person who is entitled to pre-emption has heard of a sale, he ought to claim his right immediately on the instant (whether there is any one by him or not) and when he remains silent without claiming the right, it is lost." There is one instance mentioned in the Hedaya, and which is also cited in Baillie's Mahomedan law, that if a pre-emptor receives the information of a sale by letter, and the information is contained in the beginning or middle of the letter, and he reads on to the end without making his claim, the right is lost. That is treated as an opinion which has been expressed, but the author of that book treats it as an open question. Upon these authorities, we are of opinion that the decision of the Judge is right.

3. The case of Maharaj Sing v. Lallah Bhuchook Lall (1864) W.R. 294, in which Mr. Justice Loch decided that the act of a claimant springing up from his seat, and claiming his right of pre-emption, instead of claiming it from a sitting posture, cannot be deemed a delay sufficient to entail a forfeiture of his right, is entirely consistent with the doctrines of the Mahomedan law. The appeal is dismissed with costs.