

## Har Prasad Singh And Ors. vs Jaisri And Ors. on 18 January, 1951

**Equivalent citations: AIR1951ALL563, AIR 1951 ALLAHABAD 563**

### JUDGMENT

Kidwai, J.

1. On 7-6-1945, Jagannath sold the property in dispute to Nageshwar & his wife, Ram Pati, by a registered sale deed. On the same day the vendee executed a deed agreeing to reconvey the property to the vendor if the consideration for the sale was returned within 18 years. This deed was also registered on the same day. Thereafter Jaisri instituted a suit for pre-emption of the property sold. While this pre-emption suit was still pending the suit out of which this appeal arises was filed on 5-8-1946, by Jagannath against Ram Pati, Sheo Prasad, son of Nageshwar, who had died in the meanwhile & Jaisri claiming specific performance of the contract for sale entered into between the vendor and the vendee on 7-6-1945. In the plaint it was pointed out & that the pre-emption suit was pending & that the 13th August, was fixed for its disposal.

2. The original vendor admitted the agreement & expressed their readiness to abide by it. Jaisri, however, denied the agreement & pleaded that, in any case, it did not bind him. He further pleaded that he had already got a decree for pre-emption and his rights under that decree could not be affected by the agreement.

3. Apart from the issue as to relief, the trial Ct framed only the following other issue : "Is Ex. 1 genuine? If so, is it binding on the debts?"

4. On the date on which issues were framed the pltfs' learned Advocate attested that the agreement to reconvey was contemporaneous with the sale. The pltf produced two witnesses, who proved the agreement, Ex. 1, & also proved that it was entered into simultaneously with the deed of sale. Upon this evidence the learned Munsif held that the deed Ex. 1 was proved & that it was also proved to have been simultaneously executed, the reason for there being two separate deeds being that, otherwise it would be considered, by reason of the amendment to Section 58(c), T. P. Act, to be a deed of mtge by conditional sale. He accordingly held that the pre-emptor was bound by the contract & he was bound to reconvey the property to Jagannath.

5. Jaisri appealed & the learned Addl Civil J. of Faizabad upheld the finding as to the genuineness of the deed of agreement, but he held that it must be deemed to be subsequent to the sale since, till the sale took place, the Vendees would have no right to enter into such an agreement. He further held that the deed evidenced a personal covenant & could not be enforced against the pre-emptor. He relied upon 'Bindra Ban v. Pt. Ganga Prasad', A I R (31) 1944 Oudh 190: (217 I C 321) in support of

this view. He accordingly allowed the appeal & dismissed the suit. The pltf has now come up in second appeal.

6. It was contended by Mr. Dhaon that the pre-emptor was bound by the deed of agreement. He placed reliance upon Section 27(b), Specific Relief Act, Section 91, Trusts Act, 'Doctor Shiam Sabal v. Sharai Beg', 8 O C 275 & 'Mohan Singh v. Mt. Rukmini Devi', A I R (33) 1946 Oudh 127: (21 Luck 190).

7. On the other hand Mr. Srivastava contended that neither Section 27 (b), Specific Relief Act nor Section 91, Trusts Act, applied & that the remarks on this subject in 'Doctor Shiam Sabal v. Sharai Beg', 8 O C 275, were merely obiter while the decision in 'Mohan Singh v. Mt. Rukmini Devi', A I R (33) 1946 Oudh 127 : (21 Luck 190) did not apply. He relied upon 'Bindra Ban v. Pt. Ganga Prasad', A I R (31) 1944 Oudh 190: (217 I C 321), for the view that the pre-emptor acquired the rights evidenced by the sale deed & was not affected by any subsequent event.

8. Section 27 (b), Specific Relief Act, cannot apply because that clause only provides for the enforcement of a contract against "any other person claiming under him" (i.e. either party to the agreement) "by a title arising subsequently to the contract." The pre-emptor does not claim under the vendee but he claims against the vendee in preference to him by reason of the provisions of Section 6, Oudh Laws Act. Moreover his title does not arise subsequently to the contract but in the sale deed itself & that is a title preceding or, at the worst, simultaneous with the contract.

9. Section 91, Trusts Act, only provides that "Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract." Section 91 does not create any new right but only states what is to happen in case a right to claim specific performance exists. As has already been stated in the present case no right to claim specific performance against Jaisri exists. He cannot, therefore, be held to be a trustee for giving effect to the contract upon which that right is based. Section 91, Trusts Act, also does not benefit the applt.

10. It is true that in 'Doctor Shiam Sabal v. Sherai Beg', 8 O C 275, the learned Judicial Commissioners say that the pre-emptor takes subject to having to reconvey in such a case. In that case, however, the only question was one of limitation & the question as to whether the pre-emptor would be bound by a separate agreement between the vendor & vendee for a reconveyance of the property was neither raised nor discussed. The remark was merely made in the concluding portion of the judgment without any consideration.

11. The case of 'Shamshad Mehdi v. Md. Ilias', A I R (33) 1946 Oudh 125: (223 I C 48) only lays down the proposition that the pre-emptor is substituted for the vendee in the sale deed in the case of pre-emption. The question involved in the present case is not of any rights arising out of the sale deed but of rights arising out of a separate agreement which might have been contemporaneous with the sale deed but is not a part of it.

12. On the other hand the principles laid down in 'Bindra Ban v. Pt. Ganga Prasad', A I R (31) 1944 Oudh 190: (217 I C 321) are fully applicable. In that case the learned Judge went to the extent of holding that, even if the vendee had actually reconveyed the property to the vendor in pursuance of such an agreement, the pre-emptor would not be affected by such re-conveyance by reason of Section 52, T. P. Act. It is true that, in that case, the agreement was not registered & that consequently it could not be presumed that the pre-emptor had notice of it, but in the view which I have taken of Section 27 (b), Specific Relief Act, that is immaterial.

13. The result is that this appeal fails & is dismissed with costs. The stay order dated 22-12-1947 is vacated.