

## Sukhnandan vs Suraj Bali And Ors. on 6 October, 1950

**Equivalent citations: AIR1951ALL119, AIR 1951 ALLAHABAD 119**

### JUDGMENT

Kidwai, J.

1. The facts of this case are set out in the referring order and need not be repeated. The question for consideration is what is the true meaning to be assigned to the relevant provisions of Section 13, Oudh Laws Act, which reads as follows :

"Any person entitled to a right of pre-emption may bring a suit to enforce such right on any of the following grounds (namely) :

(a) that no due notice was given as required by Section 10 ;

(b) that tender was made under Section 11 or Section 12 and refused ;

(c) in the case of a sale, that the price stated in the notice was not fixed in good faith ;

(d) in the case of a mortgage, that the amount claimed by the mortgagee was not really due on the footing of the mortgage and was not claimed in good faith, and that it exceeds the fair market-value of the property mortgaged, or the portion of the property mortgaged in respect of which he possesses the right of pre-emption, as the case may be.

If, in the case of a sale, the Court finds that the price was not fixed in good faith, the Court shall fix such price as appears to it to be the fair market-value of the property sold, or the portion of the property sold in respect of which he possesses the right of pre-emption as the case may be.

If, in the case of a mortgage, the Court finds that the amount claimed by the mortgagee was not really due on the footing of the mortgage, and that it was not claimed in good faith and that it exceeds the fair market-value of the property mortgaged, or the portion of the property mortgaged in respect of which he possesses the right of pre-emption, as the case may be, the amount to be paid to the mortgagee shall not exceed what the Court finds to be such market-value."

2. In the present case the notice required by Section 10 was not given. The plaintiff had, therefore, a right, under Section 13 (a), to institute the suit and it has been found that he had a preferential right to pre-empt. It has to be determined what is the sum upon payment of which pre-emption is to be allowed.

3. Normally pre-emption can be allowed upon payment of the amount mentioned in the foreclosure decree. The last para, of Section 13, however, provides an exception. Giving the language used by the Legislature its prima facie meaning three conditions require to be fulfilled before the exception comes into operation. These conditions are : (1) It must be shown that the amount entered in the decree was not really due on the footing of the mortgage : (2) It must be shown that the amount was not claimed in good faith: and (3) It must be shown that the amount for which the foreclosure decree was passed exceeds the fair market-value of the property mortgaged.

4. It was, however, contended that the word 'and' used in Clause (d) and in the last paragraph of Section 13 is not used in a conjunctive sense but is used in a disjunctive sense and that it should be read as "or". Thus, if any of the conditions above enumerated exists, the Court would be bound to pass a decree for pre-emption upon payment of an amount not exceeding the market value of the property, even though the amount actually due on the mortgage was greatly in excess of that amount and there was no mala fide in the claim.

5. The learned counsel for the appellant in support of his contention relied upon the decision of a Bench of the Court of the Judicial Commissioner of Oudh in *Reoti Ram v. Lachhman Prasad*, 10 O. C. 179. This decision was followed by a Bench of the Chief Court in *Qadir Husian v. Muhammad Fazal Haq*, 8 O. W. N. 44 : (A. I. R. (18) 1931 Oudh 137) and by a single Judge in *Mt. Jairaji v. Udai Raj Singh*, 1943 O. W. N. 191: (A.I.R. (30) 1943 Oudh 282). It is because of these decisions that the present reference to a Pull Bench was made.

6. The fundamental principle of construction is that the words used in a Statute must be understood in their ordinary grammatical sense. It is clear that, in that sense, the word "and" is used as a conjunction. This will, however, not prevent the Court from departing from the ordinary grammatical meaning of a word if it appears, from the context or a consideration of the other provisions of the Statute that it was the intention of the Legislature to give it another meaning. Similarly, if the ordinary grammatical meaning of a word results in creating an absurdity or an anomaly or of rendering the legislation of no effect, a narrower or a broader meaning may be given to the word or it may be construed in such a way as to obviate the absurdity or anomaly on the principle that it could not have been the intention of the Legislature to create absurdities or anomalies or to render its enactments of no effect. In such a situation the word ' and' may well be construed in a disjunctive sense and be read as "or"--vide *Maxwell on the Interpretation of Statutes*, p. 244 (Edn. 9).

7. It must, however, be remembered, as Mr. (Late Sir Edward) Chamier himself points out in his judgment in *Reoti Ram v. Lachhman Prasad*, 10 O. C. 179 at p. 187:

"that a strong case must be made out in order to justify a departure from the primary and literal meaning of the language employed."

What has to be seen is whether such a strong case has been made out.

8. Before considering the decisions upon which the appellant relies, it is necessary to consider the enactment itself. Section 10 provides for cases of sale and foreclosure and requires a notice to be given specifying the price at which the vendor is willing to sell. Section 11 provides that, unless the sum specified in the notice is paid within three months, the right of pre-emption is lost, and the pre-emptor cannot institute a suit unless he can show that the price stated in the notice was not fixed in good faith. That is to say no matter how high the price and how much it is above the fair market value, it must be paid before pre-emption can be allowed unless it is not the real price and was fixed in bad faith. The law does not prohibit the fixing of even fancy prices by the parties to the transaction and, provided it is the real price, it must be paid--vide *Asaf-ud-daula Khan v. Abdul Ghaffar*, 4 O. W. N. 795 : (A. I. R. (14) 1927 Oudh 361).

9. Having regard to these provisions regarding sale one would expect similar provisions regarding foreclosure and, if the word "and" in Clause (d) and in the last para of Section 13 is read in the conjunctive sense, the provisions would be similar. Section 12 provides that the pre-emptor shall pay or tender to the mortgagee the amount specified in the notice under Section 10. That notice must specify the amount due in respect of the mortgage--not the market value of the property to be foreclosed. Then again para. 2 of Section 12 requires payment not only of the amount specified in the notice but also of the "interest on the principal sum secured by the mortgage .... at the rate specified by the instrument of mortgage, for any time which has elapsed since the date of the notice and any additional costs which may have been properly incurred by the mortgagee or his successor in title."

10. Thus, Sections 10 and 12 read together indicate that, in the case of foreclosure, as in the case of sales, the amount on payment of which redemption is to be allowed should be not less than the real consideration for the transaction. If the word "and" in Clause (d) and the last para of Section 13 is construed in the conjunctive sense it would be consistent with the intention so expressed by the Legislature. If, on the other hand, it is construed in the disjunctive sense it would not be consistent with this intention. On that construction if any of the three factors enumerated in Clause (d) of Section 13 exists the Court must, under the last para of the section, allow redemption on payment of a sum not exceeding the market value only. Thus the mortgagee would be deprived not only of a part of the interest lawfully due to him (and perhaps a part of the principal) but also of his future interest and costs. This is wholly inconsistent, not only with the provisions of the Act relating to sales, but also with the provisions of Sections 10 and 12 of the Act relating to foreclosure.

11. In view of these considerations, and not only because it is natural grammatical meaning, the word "and" used in Clause (d) and the last para of Section 13 should be understood to indicate a conjunctive sense.

12. The aspect of the matter which I have considered does not seem to have received any consideration in judgment of *Chamier J. C.*, in *Reoti Ram v. Lachhman Prasad*, 10 O. C. 179. He has referred to a supposed difficulty. To him it appeared that the result of construing "and" in a conjunctive sense would be that, if the notice is sufficiently served, the would-be pre-emptor must either pay the amount mentioned in the notice or institute a suit under Section 13 (d). In the latter event, he would have to pay the fair market value even though that amount may be in excess of the

amount due under the mortgage. He then said "it surely cannot have been the intention of the Legislature that a person foreclosing a mortgage should be able to place himself in a better position by claiming in the first instance more than he was entitled to claim."

He accordingly held that it would defeat the intention of the Legislature to construe "and" in the conjunctive sense.

13. The reply to this is furnished by the same judgment at a later stage (vide p. 185 of the report). Mr. Chamier himself points out that "the last clause of Section 13 does not necessarily mean that in all the cases referred to in it the Court shall fix the fair market value but only that the amount to be paid shall not exceed the fair market value."

14. Thus this anomaly which might, according to Chamier J. C., have existed, is shown by his own judgment, as supported by the last para, of Section 13 not to exist.

15. In the whole of his lengthy judgment no other anomaly is pointed out which would result from giving the word "and" its natural meaning. The learned Judicial Commissioner was, however, greatly impressed by the fact that, when the Punjab Laws Act of 1872 was amended by Act XII [12] of 1878 (wrongly printed in the judgment as 1868) the whole of Section 13, Oudh Laws Act, was incorporated as Section 16 but the word "and" was replaced by the word "or". He considered that this was an indication that the word "and" in the Oudh Laws Act had been used in the same sense as "or" in the Punjab Act. This result does not follow: (1) Because, if the Legislature had so intended it could have amended the Oudh Laws Act at the same time and (2) The whole law relating to pre-emption was altered in 1905 by the enactment of the Punjab Pre-emption Act of that year. In this new Act the language was entirely altered and the new Section 23 (which became Section 26, Punjab Pre-emption Act of 1913) reads :

"(1) If, in the case of a foreclosure, the parties are not agreed as to the amount at which the pre-emptor shall exercise his right of pre-emption, the Court shall determine whether the amount claimed by the mortgagee is really due under the terms of the mortgage and whether it is claimed in good faith; and if it finds that the amount is not so due, or though due, it is not claimed in good faith it shall fix the price for the purposes of the suit "the market value of the property.

(2) If the Court finds that the amount is really due and is claimed in good faith it shall fix such amount as the price for the purposes of the suit."

16. Thus it appears that the experiment of replacing the word "or" for the word "and" was not persisted in the Punjab and there is no reason to be influenced by the use of that particular word in the Punjab Laws Act.

17. With all respect to the eminent Judge who decided that case, I regret that it is not possible for me to accept the interpretation of Clause (d) and the last para of Section 13 given in the judgment in Reoti Ram v. Lachhman Prasad, 10 O. C. 179.

18. The two decisions of the Chief Court simply follow the earlier decision. In Qadir Husain v. Muhammad Fazal Haq, 8 O.W.N. 44: (A.I.R. (18) 1931 Oudh 137) the point involved was not the same and it did not follow the decision in Reoti Ram v. Lachhman Prasad, 10 O. C. 179 on this point but on another. No new grounds are given why the Court should depart from the plain grammatical meaning of the word "and" as used in Clause (d) and the last para, of Section 13 and it must be held that it is necessary to prove the existence of all the three conditions before the Court can reduce the amount.

19. I would, therefore, allow the appeal, set aside the judgment and decree of the Courts below and remand the case to the trial Court to frame the necessary issue and determine whether: (a) the amount claimed by the mortgagee was not really due on the footing of the mortgage; and (b) the amount was claimed in good faith.

20. The Court shall proceed to dispose of the suit in the light of its findings on these points. The parties will bear their own costs of this appeal.

Agarwala, J.

21. I agree.

Chandiramani, J.

22. I agree.

23. By the Court. -- The appeal is, therefore, allowed. The judgment and decree of the Courts below are set aside and the case is remanded to the trial Court to frame the necessary issue and determine whether: (a) the amount claimed by the mortgagee was not really due on the footing of the mortgage; and (b) the amount was claimed in good faith.

24. The Court shall proceed to dispose of the suit in the light of its findings on these points. The parties shall bear their own costs of this appeal.