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PREEMPTION

Preemption (Shufaa)

The law of preemption is essentially a part of Muslim Law, The Muslim judges introduced this in India. It is based on Islamic text. It was introduced with a view to preventing a stranger, among co-sharers and neighbours who is likely to cause both inconvenience and vexation.

Definition : It is a right which the owner of an immovable property possesses to acquire by purchase another immovable property, which has been sold to another person (Mulla).

(i) Essentials:

- (a) The preemptor must tie the owner of the immovable property
and
- (b) There must be a sale of certain properties, not his own.

The preemptor must stand in certain relationship, to the vendor in respect of property sold,

Govinda Dayal's Case : This is the leading case on the topic, Here the preemptor P and the vendor V were Muslims. But the purchasers were Hindus. The question was .whether in such a case the right of preemption could be enforced against a non-Muslim.

The court decided that there was a right of preemption. Justice Mittar held that it was a repurchase not, from the vendor but from the purchaser. Justice Mohammsd held : that the presumption is not a right, to repurchase from the vendee but it is a right to substitute, which entitles the preemptor to stand in the shoes of the purchaser. It is applied throughout India, as a matter of justice, equity and good conscience. The Supreme Court has held : that the right of preemption was a right of substitution and not of repurchase. !t also held that

ns should make the demands after the "sale" is completed, but not before (Radhakisarv Vs. Shridar). The sale must be under the Transfer of Property Act and registration is essential. Hence, the demand is to be made after registration;

(v) *Right when lost* ,

(a) The right is lost by acquiescence or waiver. This means noi following the necessary formalities.

(b) The preemption is lost if the preemptor dies after the first two demands, but before filing a suit. But if he dies pending a suit his legalrepresentative may be brought on record.

(c) Release : The right is lost if the preemptor releases after taking some consideration.

where preemption was based on custom, it becomes part of law of the land. Hence the law of preemption founded on Islamic law is not void as being unconstitutional.

(ii) *Preemptors* '. They may be ;

(a) A co-sharer in the property.

(b) A participator in immunities, that is, a person having a right of way etc.

(c) A neighbour or owner of adjoining property,

(Hi) *Right when arises* The right arises in case of sale or exchange.

(iv) *Formalities* : The necessary formality is known as the 3 demands,

(a) The first demand—Talabi Muwa sibat. The preemptor must assert his claim immediately on hearing of the sale. Witnesses are not necessary.

The delay in this is construed as an election not to preempt. The delay of 12 hours was considered as bad. Hence is not allowed.

(b) The second demand—Talabi Ish-had : The preemptor must without any delay make the second demand. He must refer to the first demand in the presence of two witnesses and also the vendor or. the purchaser.

(c) The third demand—Talabi Tamlik: This is not a demand but actually taking legal action. If the claim is not considered then a suit may be brought. This is Talabi Tamlik. The period of limitation is one year.

According to the Supreme Court a Mohammedans should make the demands after the "sale" is completed, but not before {FJadhakistan Vs. Shridar}. The sale must be under the Transfer of Property Act and registration is essential. Hence, the demand is to be made after registration.

(v) *Right when lost*

.(a) The right is lost by acquiescence or waiver. This means not following the necessary formalities.

(b) The preemption is lost if the preemptor dies after the first two demands, but before filing a suit. But if he dies pending a suit his legal representative may be brought on record.

(c) Release : The right is lost if the preemptor releases after taking some consideration.

(vi) *Legal effect *

The preemptor stands in all respects in the shoes of the buyer and takes the property subject to equities/if any. The ownership in the land is transferred to the preemptor, only when possession is given to him. The decision of the court must specify giving deductions in respect of the extent of the property, cost etc.