Present: Ennis J.

1918.

KANEKAMUTTU *v.* THAMAR *et al.*

214—C. R. Point Pedro, 17,781

Pre-emption—Tesawalamai—*No formal notice—Knowledge.*

Where there was no formal notice of an intended sale to a person who was entitled under the *Tesawalamai* to pre-empt a land, but where such person had knowledge of the intended sale, it was held that he cannot complain of any want of reasonable publication of the intention to sell.

THE facts appear from the judgment.

Arulanandan, for appellant.—No formal notice of the intended sale is necessary. All that should be proved is that the plaintiff-respondent was aware of the intended sale. The provisions of the Tesawalamai with regard to notice are obsolete and have no present application; for instance, the publication of the notice at the church for three successive Sundays. Ordinance No. 4 of 1895 abolishes publication of intended sales (*Suppiah v. Tambiah* [2]). The plaintiff's evidence shows that he did not offer any price to the vendors. He should have offered the market price.

[1] *Heydon's Case, 3 Coke's Report 76.*

[2] *(1904) 7 N. L. R. 151.*

1918.

Kanekamuttu v. Thamar

J. Joseph and *Balasingham*, for the respondent.—No reasonable notice has been given. Although the formalities for a notice as prescribed by article 1 of section 7 of the Tesawalamai are obsolete, yet it is incumbent on the intending vendor to give notice. There is evidence that the plaintiff offered a sum of money to the vendors' proctors. The sum offered need not be the market price. (*Suppiah v. Tambiah* (*ubi supra*).

Cur. adv. vult.

November 26, 1918. ENNIS J.—

In this case the appeal is from a judgment of the Court of Requests of Point Pedro, declaring the plaintiff entitled to a right to pre-empt certain land which has been sold by the first, second, and third defendants to the fourth and fifth defendants. Two issues only were framed in the case, whether the first, second, and third defendants sold the share in question to the fifth defendant after due notice to the plaintiff; and secondly, what is the market value. The plaintiff admitted that he was well aware of the sale contemplated by the first, second, and third defendants, and that he even went to the proctors conducting the sale. The learned Commissioner, however, has held that he had received no notice as contemplated by the law of *Tesawalamai*. This question of notice of the *Tesawalamai* came up in the case of *Suppiah v. Tambiah*,[1] and it was there held that reasonable notice should be given. It is questioned now as to what is reasonable notice. Under the *Tesawalamai*, when a person desires to sell land with regard to which somebody else had a right of pre-emption, he had to publish a notice of his intention at the church for three successive Sundays. Now, such a publication is merely a means by which the intention to sell is brought to the notice of the person who has the right of pre-emption. It is not the doctrine of notice as generally understood. Once the plaintiff admitted that the matter had been published by the defendant, and that it had come to his notice, he cannot complain of any want of reasonable publication of the intention to sell. It then becomes a question as to whether the plaintiff was entitled to this action to insist on his right of pre-emption. It appears that he brought into Court a sum of Rs. 25 as the market value of the share sold. The learned Commissioner has found that that was not the market value, and that the land was worth Rs. 50. It appears that the fourth and fifth defendants actually paid Rs. 100, but there is some reason to suppose that this payment was the result of combination against the plaintiff. The Maniagar valued the share at Rs. 33, and said that the highest amount one could offer for the share was Rs. 50. The plaintiff in giving evidence said: "I did not offer any price to the vendors." It is suggested that one could go behind the plaintiff's evidence in this respect, because there is

[1] *(1904) 7 N. L. R. 151.*

evidence that the plaintiff had offered sums to the vendors' proctors. I do not, however, feel justified in disregarding the plaintiff's sworn testimony. If it be untrue, he must stand by it. The matter having come to his notice, if he wished to exercise the right of pre-emption, he should have offered the market price of the land. A failure to do this would entitle the defendants to conclude their sale with third parties. It would seem that the plaintiff was anxious to acquire the rights of the first, second, and third defendants at too small a price, and hence has lost his rights. Had it not been for his sworn statement that he offered no price, I should have accepted the evidence that he had offered to buy at Rs. 60, and have allowed the judgment to stand on that basis, but I find a difficulty in assisting the plaintiff on appeal when his evidence is based on what he deemed to be his interest rather than the truth of the facts.

I allow the appeal, with costs.

Allowed.