

1944

Present: De Kretzer and Jayetileke JJ.

SITTAMPARAMPILLAI, Appellant, and NAVARATNAM  
et al., Respondents.

92—D. C. Jaffna, 323.

*Thesawalamai* — Right of pre-emption — Price to be paid — Sum actually paid by purchaser — No right to offer the market value.

Under the *Thesawalamai* a person having the right of pre-emption of a land is entitled to exercise the right by offering to buy the land at the price actually paid for it by a purchaser.

In such a case he is not entitled to assert the right by offering to buy the land at the market value.

**A** PPEAL from a judgment of the District Judge of Jaffna.

N. Nadarajah, K.C. (with him T. Paramsoty), for second defendant, appellant.

L. A. Rajapakse, K.C. (with him H. W. Thambiah), for plaintiffs, respondents.

December 15, 1944. DE KRETZER J.—

The plaintiff brought this action claiming pre-emption in a land of which she owned a half-share. The first defendant had sold his half-share to the second defendant for Rs. 750 and the trial judge sees no reason to believe that this sum was not actually paid. The plaintiff, however, estimated that the half-share should be worth Rs. 400, alleged that that was the sum really paid by the second defendant to the first defendant and brought that sum into court as being the fair market value and asked that the deed in favour of the second defendant be set aside and she be allowed to buy the land. The plaintiff also professed to be willing to pay any further sum which the court ordered her to pay, but it is clear that this further sum was to be on the value which the court decided was the market value. At no stage did she profess to be willing to pay the sum of Rs. 750, if in fact that had been paid for the land.

The right of pre-emption given by the *Thesawalamai* is given in Chapter 51, Part 7, Section I of the Legislative Enactments. There is no mention there of any such thing as a market value. As its very term implies, when a co-owner wishes to sell, the other co-owner is at liberty to claim or demand the preference of being the proprietor. That must mean that the person owning a right is not deprived of his natural right to procure the best possible price for his share but that he cannot sell it to an outsider if a co-owner is willing to buy it at that price. That is the only preference given to a co-owner. A case in Morgan's Digest at page 27 was interpreted by Ennis J. in *Seneviratne v. Sabapathy*<sup>1</sup>, to say that a neighbour who wishes to purchase must pay the best price which can be obtained for the land. In the course of that case Ennis J. uses the expression "reasonable price" but does not state where he gets it from

<sup>1</sup> 2 *Times of Ceylon L. R.* 139.

and his only comment on the report in Morgan's Digest is that the case does not assist the court to say what is a reasonable price in the eyes of relations. Had the Thesawalamai referred to a reasonable price in the case of relatives then, of course, that would have to be ascertained. But, with all due respect, I fail to see that any such restriction is placed on the already heavy restriction placed on a co-owner. Even the expression "market price" is open to misconstruction. As was pointed out by Dalton J. in the case of *Mylvaganam v. Kandiah* a genuine sale taking place at Rs. 3,500 the District Judge was not entitled to hold that the land was only worth Rs. 2,700. One can understand if the market price is the price which the land would fetch at a public auction. In that case the second defendant would have to pay Rs. 750 and the plaintiff would have the right of pre-emption at that price; just as a co-owner has a right of pre-emption when a land is sold by the Fiscal in execution of a writ. But to ascertain the market price by taking the average price of lands in the neighbourhood seems to me to place an undue burden on the court in ascertaining what should be the proper price to be paid and to deprive a co-owner of a price which he might legitimately obtain.

In this case the plaintiff is willing to pay Rs. 750. Our order will be that the money necessary to bring the purchase price to Rs. 750 should be deposited within a fortnight of the record reaching the District Court of Jaffna, and the order being communicated to the proctors in the case.

We think the order as to costs in the lower court was not correct. The second defendant failed on the question of notice but succeeded substantially on the question of the price. We think that the costs in the lower court should be borne by the respective parties. As regards the costs of appeal, we think that the appellant has substantially succeeded and is entitled to half the costs of appeal.

JAYETILEKE J.—I agree.

*Appeal allowed.*

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