

ACT No. XII OF 1878.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 28th March 1878).

An Act for the further amendment of the Panjáb Laws Act, 1872.

FOR the purpose of further amending the Panjáb Laws Act, 1872; It is hereby enacted as follows:—

1. For section 5 of the said Act, the following shall be substituted (namely):—

“ 5. In questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family-relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be—

“(a) any custom applicable to the parties concerned, which is not contrary to justice, equity or good conscience, and has not been, by this or any other enactment, altered or abolished, and has not been declared to be void by any competent authority;

“(b) the Muhammadan law, in cases where the parties are Muhammadans, and the Hindú law, in cases where the parties are Hindús, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is above referred to.”

2. For sections 9 to 18 (both inclusive) of the same Act, the following shall be substituted:—

“ 9. The right of pre-emption is a right of the persons hereinafter mentioned or referred to, to acquire, in the cases hereinafter specified, immoveable property

in

2 E

Preamble.

Substitution of new section for Act IV of 1872, s. 5.

Decisions in certain cases to be according to Native law.

Substitution of new sections for Act IV of 1872, ss. 9 to 18. Right of pre-emption.

in preference to all other persons. It arises in respect of sales (whether under a decree or otherwise) of immoveable property and of foreclosures of rights to redeem such property.

Presumption as to its existence.

“ 10. Unless the existence of any custom or contract to the contrary is proved, such right shall, whether recorded in the settlement-record or not, be presumed—

“(a) to exist in all village-communities, however constituted, and

“(b) to extend to the village-site, to the houses built upon it, to all lands and shares of lands within the village-boundary, and to all transferable rights of occupancy affecting such lands.

Its existence in towns to be proved.

“ 11. The right of pre-emption shall not be presumed to exist in any town or city, or any sub-division thereof, but may be shown to exist therein, and to be exercisable therein by such persons and under such circumstances as the local custom prescribes.

Devolution of right when property to be sold or foreclosed is situate within a village.

“ 12. If the property to be sold or the right to redeem which is to be foreclosed is situate within, or is a share of, a village, the right to buy or redeem such property belongs, in the absence of a custom to the contrary,—

“(a) first, in the case of joint undivided immoveable property, to the co-sharers ;

“(b) secondly, in the case of villages held on ancestral shares, to co-sharers in the village, in order of their relationship to the vendor or mortgagor ;

“(c) thirdly, if no co-sharer or relation of the vendor or mortgagor claims to exercise such right, to the landowners of the patti or other sub-division of the village in which the property is situate, jointly ;

“(d) fourthly, if the landowners of the patti or other sub-division make no joint claim to exercise such right, to such landholders severally ;

“(e) fifthly, to any landholder of the village ;

“(f) sixthly, to the tenants (if any) with rights of occupancy in the property ;

“(g) seventhly,

“(g) seventhly, to the tenants (if any) with rights of occupancy in the village :

“ Provided that when the property is land to the trees standing on which the Government is entitled, such right belongs to the Lieutenant-Governor of the Panjáb in preference to all other persons.

“ Where two or more persons are equally entitled to such right, the vendor or mortgagor may determine which of them shall exercise the same.

“ Nothing in the former part of this section shall be deemed to affect the Panjáb Tenancy Act, 1868, section 34 ; but if a landlord refuse or neglect to exercise the right conferred on him by that section, such right belongs, first, to the tenants (if any) with rights of occupancy in the property concerned, and secondly, to the tenants (if any) with right of occupancy in the village in which such property is situate.

“ 13. When any person proposes to sell any property, or to forcelose the right to redeem any property, in respect of which any persons have a right of pre-emption, he shall give notice to the persons concerned of the price at which he is willing to sell such property, or of the amount due in respect of the mortgage, as the case may be.

Notice to pre-emptors.

“ Such notice shall be given through any Court within the local limits of whose jurisdiction the property or any part thereof is situate, and shall be deemed sufficiently given if it be stuck up on the chaupál or other public place of the village, town or city in which the property is situate.

“ 14. Any person having a right of pre-emption in respect of any property proposed to be sold, shall lose such right, unless within three months from the date of giving such notice he pays or tenders to the person so proposing to sell the price aforesaid or the fair market-value of the property, or deposits the same in the Court from which the notice issued. When any money is so deposited the Court shall give notice of such deposit to the vendor or mortgagor as the case may be.

Loss of right of pre-emption.

“ 15. When

Right of pre-emptor on foreclosure.

“15. When the right of pre-emption arises in respect of the foreclosure of the right to redeem any property, any person entitled to such right may, at any time within three months after the giving of the notice required by section thirteen, pay or tender to the mortgagee or his successor in title the amount specified in such notice, or the amount really due on the footing of the mortgage, and shall thereupon acquire a right to purchase the property.

“On completion of the purchase the person exercising the right of pre-emption shall be bound to pay to the mortgagee or his successor in title the amount specified in such notice, together with 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.

Suit to enforce right of pre-emption.

“16. 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 thirteen;

“(b) that tender was made under section fourteen or section fifteen 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 foreclosure, that the amount claimed by the mortgagee was not really due on the footing of the mortgage, or was not claimed in good faith, or that it exceeds the fair market-value of the property mortgaged.

“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.

“If, in the case of a foreclosure, the Court finds that the amount claimed by the mortgagee was not really due on the footing of the mortgage, or that it was not claimed in good faith, or that it exceeds the

fair

fair market-value of the property mortgaged, the amount to be paid to the mortgagee shall not exceed what the Court finds to be such market-value.

“16A. When any suit is instituted under section sixteen, the Court may in its discretion require the plaintiff to pay into Court the price or market-value of the property, or, in the case of a right to redeem property, the amount really due on the footing of the mortgage, and if such requisition is not complied with in such time as the Court directs, may reject the plaint.

Power to require payment into Court.

“17. If the Court find for the plaintiff, the decree shall specify a day not being a holiday on or before which the purchase-money or the amount to be paid to the mortgagee shall be paid.

Decree to fix time for payment.

“18. If such purchase-money or amount is not paid into Court before it rises on that day, the decree shall become void, and the plaintiff shall, so far only as relates to such sale or foreclosure, lose his right of pre-emption over the property to which the decree relates.”

Effect of non-payment of purchase-money.

3. For section 35 of the same Act the following shall be substituted (namely) :—

Substitution of new section for Act IV of 1872, s. 35. Jurisdiction of Court of Wards.

“35. The Court of Wards may, at its discretion, take charge of, and administer, the estates of all disqualified persons, that is to say :—

“(a) females deemed by the Local Government incompetent to manage their estates ;

“(b) persons who have not completed the age of eighteen years ;

“(c) idiots ;

“(d) lunatics ;

“(e) persons declared by the Local Government incapable, owing to physical defects or infirmities, of managing their own estates ;

“(f) persons convicted of a non-bailable offence and unfitted, in the opinion of the Local Government, by vice or bad character to manage their estates ;

“(g) persons

“(g) persons declared by the Local Government, on their own application, to be unfitted to manage their estates :

Proviso.

“Provided that the Court of Wards shall not take charge of, or administer, the estate of any person of any of the classes mentioned in clauses (a), (b), (c) and (d) of this section, unless he has inherited a beneficial interest in an estate for which a settlement was made with his ancestor, or in respect of which he would have been entitled to be settled with, if he had been competent to make an agreement for the payment of revenue, or unless he is the holder by inheritance of an assignment of land-revenue :

Further proviso.

“Provided also that the Court of Wards shall not take charge of, or administer any beneficial interest in, an estate in which more persons than one have a joint undivided interest, unless all such persons are so circumstanced as to be subject to the Court of Wards.”

Amendment of Act IV of 1872, section 38.

4. To section 38 of the same Act the following clause shall be added (namely) :

“Persons whose property is under the superintendence of the Court of Wards shall not be competent to create, without the sanction of the Court, any charge upon, or interest in, such property or any part thereof.”

Amendment of Act IV of 1872, section 40.

5. To section 40 of the same Act shall be added the words ‘and may withdraw any powers so conferred.’

Amendment of Act IV of 1872, sections 43, 44 and 47. Penalty for breach of rules under Act IV of 1872.

6. In sections 43, 44 and 47 of the same Act the words ‘with the consent and’ shall be omitted.

7. Whoever breaks any rule made by the Local Government under the same Act shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to fifty rupees, or with both. All penalties inflicted since the fifteenth day of July 1875 which might have been inflicted if this section had been in force shall be deemed to have been inflicted in accordance with law.

8. To