

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Jadu Lal Sahu and others v. Maharani Janki Koer and others, from the High Court of Judicature at Fort William in Bengal; delivered the 20th March 1912.

PRESENT AT THE HEARING :

LORD SHAW.

LORD ROBSON.

SIR JOHN EDGE.

MR. AMEER ALI.

[DELIVERED BY MR. AMEER ALI.]

The suit out of which this Appeal arises was brought by the Plaintiff-Respondent to establish her right of pre-emption in respect of certain undivided shares in a number of villages comprised in Mahal Motihari, situated in the district of Champaran.

The shares in question belonged to a Mahommedan lady named Barkatunnissa, the first Defendant to this action, who sold the same to the Sahu Defendants by a deed of sale dated the 28th of July 1904. Barkatunnissa owned an interest in 24 out of the 31 villages comprised in the mahal, whilst the Plaintiff possesses shares in 18. The vendors had admittedly no proprietary interest in Mahal Motihari prior to their purchase from Barkatunnissa.

The Plaintiff claims that as a co-sharer in the mahal she is entitled to the right of pre-emption in respect of the shares sold to the Sahus by the first Defendant.

Champaran appears to have been part of the Civil Division of Saran until sometime after the institution of the suit. The action was accordingly brought in the Court of the Subordinate Judge of Saran, but owing to the subsequent amalgamation of Champaran with Tirhoot, it was tried before the Subordinate Judge of Mozzufferpur (the Suddar station of Tirhoot) who decreed the Plaintiff's claim. This decree has been affirmed by the High Court of Bengal.

It has been urged on behalf of the Appellants that as the right claimed is a creation of the Mussulman law, and it is not proved that the Mussulman law of pre-emption is in force among the Hindus of the district of Champaran, both the pre-emptor and the vendees being Hindus, the action must fail.

The suit was instituted on the 7th of March 1905, the Sahu Defendants filed their defence on the 16th of June, and issues for trial were settled on the 27th of September 1905. It was not, however, until the 11th of July 1906, when, as the learned Judges of the High Court observe, "the suit was ripe for hearing," that the Sahu Defendants for the first time raised a question as to the existence of the right of pre-emption among the Hindus of Champaran. Both the Courts in India have, in their Lordships' judgment rightly, overruled the Defendants' objection.

The law of pre-emption, under which the Plaintiff claims the right, was introduced into India with the Mahommedan Government. The Province of Behar, to which the District of Champaran appertains, was an integral part of the Mahommedan Empire and consequently it would not be surprising to find that in Behar the right of pre-emption is enforceable irrespective of the persuasion of the parties concerned.

In the case of *Fakir Rawot v. Sheikh Emansbukhsh* (Beng. L.R., Full Bench Rulings, p. 35) a

Full Bench of the High Court of Bengal gave judicial recognition to the existence of the right of pre-emption among the Hindus of Behar. In delivering the judgment the Chief Justice (Sir Barnes Peacock) reviewed the earlier cases bearing on the subject, and held that :—

“ a right or custom of pre-emption is recognised
 “ as prevailing among Hindus in Behar, and some other
 “ provinces of Western India; that in districts where its
 “ existence has not been judicially noticed, the custom will
 “ be matter to be proved; that such custom when it exists,
 “ must be presumed to be founded on and co-extensive with
 “ the Mahomedan law upon that subject, unless the contrary
 “ be shown: that the Court may, as between Hindus,
 “ administer a modification of that law as to the circum-
 “ stances under which the right may be claimed, when it
 “ is shown that the custom in that respect does not go the
 “ whole length of the Mahomedan law of pre-emption, but
 “ that the assertion of the right by suit must always be
 “ preceded by an observance of the preliminary forms pre-
 “ scribed in the Mahomedan law, which forms appear to
 “ have been invariably observed and insisted on through
 “ the whole of the cases from the earliest times of which
 “ we have record.”

In their Lordships' judgment the decision in *Pakir Rawot's* case is conclusive on the point raised on behalf of the Defendants. Their abstention from taking the objection in a definite and distinct form at the earliest stage of the case was, it may fairly be presumed, due to the explicit enunciation of the law in the ruling referred to.

It has also been contended that the formalities insisted upon by the Mussulman law as essential preliminaries to the assertion of the right, could not be performed by the manager of the Plaintiff's estate appointed by the Court of Wards.

It appears that the Plaintiff is a “ disqualified proprietor ” under the Court of Wards Act (Bengal Act IX. of 1879), having been declared to be incompetent to manage her property, and

her estate is in the charge of the Court of Wards. Section 40 of the Act which defines the general duty of managers appointed by the Court of Wards provides that he "shall manage the property committed to him diligently and faithfully for the benefit of the proprietor, and shall in every respect act to the best of his judgment for the ward's interest as if the property were his own."

The Mussulman law insists that the first formality technically called "the immediate demand" should be observed by the pre-emptor or someone on his behalf immediately on receipt of the news of the sale, otherwise the right of pre-emption falls to the ground. The second formality consists in the repetition of the "demand" with as little delay as possible under the circumstances, in the presence of witnesses either before the vendor or the vendee or on the premises. The Courts in India have found that the ceremonies were duly performed by the manager in accordance with the prescriptions of the law. Had he failed in performing either of the ceremonies, he would have caused irreparable loss to the Plaintiff, as her right would have been absolutely defeated by his laches. In their Lordships' opinion Mr. Lewis, as manager of the Plaintiff's estate, was competent, independently of the provisions of Section 40 of the Court of Wards Act, to observe the formalities on her behalf. The section, however, which defines his duties appears to their Lordships to fully clothe him with authority to act as he did; the validity of his action, therefore, did not depend on its subsequent adoption by the Court of Wards. In this view the English cases cited at the Bar have no application to the present case.

It was also urged that the claim to coparcenary, on which the Plaintiff's right of pre-emption was based, arose out of the fact that

the vendor and pre-emptor were jointly liable for the payment of the Government revenue assessed on the villages comprised in the mahal, and that this joint liability does not constitute the co-parcenary contemplated by the Mahomedan law. This argument seems to proceed on a misconception of the land system of India. A mahal is a unit of property; it may consist of one village or of several villages: it may be owned by one or several proprietors who may have an interest in all or some of the villages comprised in the estate. Their joint liability for the Government revenue arises from the fact that they own undivided interests in the property; and that joint liability does not cease in the case of any co-sharer until his particular share has been partitioned by the Revenue authorities, when the share so partitioned becomes a separate unit of property.

On the whole their Lordships are of opinion that the Decree of the High Court should be affirmed, and this Appeal dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

JADU LAL SAHU AND OTHERS

v.

MAHARANI JANKI KOER AND OTHERS.

DELIVERED BY MR. AMEER ALI.

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