

*Judgment of the Lords of the Judicial Committee
on the Appeal of Mussamut Lachho v. Maya
Ram and others, from the High Court of Judi-
cature for the North - Western Provinces,
Allahabad; delivered November 15th, 1882.*

Present :

LORD FITZGERALD.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THEIR Lordships are of opinion that the judgment of the High Court was correct.

The question is, whether, upon the construction of the Wajib-ul-arz at page 13 of the record, the Plaintiff was entitled to a right of pre-emption in the Defendant's thoke. The words are:—"Each sharer is by all means at liberty to transfer his right and share, but first of all the transfer should be effected by him in favour of his own brothers and nephews, who may be sharers, and, in case of their refusal, in favour of the other owners of the thoke." The Lower Court seems to have treated the case as though the Wajib-ul-arz had said, "in favour of the other owners or shareholders of the village"; but it is "the other owners of the thoke." Now whether the thoke comprised the divided lands which were recorded as belonging to Ibrahim alone, or included the undivided lands which were appurtenant to those divided lands, the Plaintiff was no co-owner with Ibrahim. She was not a joint tenant, nor a tenant in common with him as to the divided portion of the lands; if she were a tenant in common of the undivided lands, that

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did not make her an owner of Ibrahim's share in those lands. A tenant in common is the owner of his own share; but he is not an owner of the other tenant in common's share. It appears, therefore, to their Lordships that the Plaintiff was not an owner of the thoke which was sold. The right of pre-emption is in favour of the tenant's own brothers and nephews. If they and the owner of the share were a joint undivided family, the brothers or nephews would be co-owners and sharers; there might also be other owners of the share with them. In such case, if the sharer wished to sell his share, his own brothers or nephews in the first instance, and in case of their refusal the other co-owners, would be entitled to the right of pre-emption. In this case the Plaintiff was not an owner or shareholder in the share sold, nor had she any interest in it; consequently the High Court was right in deciding that she was not entitled to the right of pre-emption.

Under these circumstances, their Lordships will humbly advise her Majesty that the decree of the High Court be affirmed, and the Appeal dismissed.