

1877

BAKHAT RAI  
v.  
WAZIR ALI.

1877

July 12.

damages it is in part affirmed and in part reversed, and the plaintiffs will obtain a decree for the sum above-mentioned. Under the circumstances, we order each party to bear their own costs in all Courts.

## APPELLATE CIVIL

*Before Mr. Justice Pearson and Mr. Justice Turner.*

PHULMAN RAI (DEFENDANT) v. DANI KUARI (PLAINTIFF).\*

*Pre-emption—Hindu Widow—Wajib-ul-arz.*

A Hindu widow holding by inheritance her deceased husband's share in a village fully represents his estate as regards such share, and is entitled to prefer a claim to pre-emption as a share-holder in such village.

THIS was a suit to establish the plaintiff's right of pre-emption to a share in a certain village, under a condition in the village administration-paper by which, on the sale of a share, share-holders were entitled to purchase in preference to strangers. The plaintiff was the widow of a deceased share-holder. Phulman Rai, a defendant in the suit, who also claimed the right of pre-emption, set up as a defence to the suit that the plaintiff was not a share-holder, being in possession of her deceased husband's share by way of maintenance, and not by inheritance, and that she could not maintain the suit. The Court of first instance dismissed the suit on the ground that the sale impugned by the plaintiff was only made on her refusing to purchase. The lower appellate Court gave her a conditional decree, being of opinion that she did not refuse to purchase. It did not enter into the question raised by the defence of Phulman Rai.

Phulman Rai appealed to the High Court, raising the same defence to the suit as he had raised in the Courts below. The High Court (Pearson and Turner, JJ.) remanded the suit to the lower appellate Court to determine whether the plaintiff was a sharer in the estate or only entitled to maintenance. The lower appellate Court did not distinctly determine this issue, but found that the share in the plaintiff's possession was joint and undivided ancestral property. To this finding the plaintiff took exception on the evidence.

\* Special Appeal, No. 266 of 1877, from a decree of Maulvi Sultan Hasan, Subordinate Judge of Gorakhpur, dated the 16th December, 1876, reversing a decree of Maulvi Hafiz Rahim, Munsif of Banagan, dated the 27th October, 1876.

1877

The *Senior Government Pleader* (Lala Juala Prasad) and Pandit *Ajudhia Nath*, for the appellant.

PHULMAN RAY  
v.  
DANI KHARI.

Munshi *Hanuman Prasad*, for the respondent.

The following judgment was delivered by the High Court:—

TURNER, J.—(After finding on the evidence that the property was the separate property of the plaintiff's husband to which she succeeded by inheritance)—We must admit the objection taken to the finding on the issue remitted, and it remains for us to determine whether a widow, holding her husband's share by inheritance, is entitled to pre-emption. In our judgment so long as she enjoys the estate she fully represents the estate and can claim to exercise all rights which would attach to it in the hands of a male owner. The circumstance that the widow lived with the vendors would not deprive her of her right, it being found that the claim is not collusive.

*Appeal dismissed.*

## APPELLATE CIVIL.

1877  
July 16.

*Before Mr. Justice Pearson and Mr. Justice Turner.*

DULAR CHAND (PLAINTIFF) v. BALRAM DAS AND OTHERS (DEFENDANTS).\*

*Non-joinder of Parties—Rejection of Plaintiff.*

A suit was instituted by one only of the partners of a firm in respect of a cause of action which had accrued to all jointly. Notwithstanding that objection to the non-joinder of the other partners was duly taken, the plaintiff contented himself with putting in a petition on behalf of the other partners intimating their willingness that the suit should proceed in the sole name of the plaintiff, instead of applying to the Court to add the other partners as plaintiffs. In appeal the High Court admitted the objection, and refused, under the circumstances, to add the other partners as plaintiffs.

As to the nature of this suit it is sufficient, for the purposes of this report, to state that the suit was brought on the 30th March, 1876, by one of the five partners composing a firm in his own name, on a cause of action which he had in common with the other partners of the firm. In the written statement filed by one of the defendants on the 15th May, 1876, objection was taken to the non-joinder of the other partners. On the 7th June, 1876, on

\* Regular Appeal, No. 110 of 1876, from a decree of J. W. Sherer, Esq., C.S.I., Judge of Mirzapur, dated the 7th November, 1876.