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NAND KUMAR v. RADHA KUARI.

The *Senior Government Pleader* (Lala *Juala Parshad*) and Munshi *Sukh Ram*, for the respondent.

The judgment of the Court, so far as it related to the above contention, was as follows :—

We are of opinion that the objection is a valid one and disposes of the plaintiff's claim. A Hindu widow succeeding to her husband's estate as heir represents the estate fully, and reversioners claiming to succeed after her are bound by decrees relating to her husband's estate obtained against her without fraud or collusion,—*Katama Natchiar* v. *The Rajah of Shivagunga* (1) ; *Ganga Jali* v. *Ram Sukal* (2) ; *Bansi Kuari* v. *Sunjhari Kuari* (3) ; *Suga Kunari* v. *Ramugrah Dubay* (4) ; *Nobin Chunder Chuckerbutty* v. *Guru Persad Doss* (5) ; *Amirtolal Bose* v. *Rajoneekant Mitter* (6).

There is no reason to believe that the decree against Musammat Ananda was obtained by collusion or fraud, and we must therefore consider that it has finally disposed of the plaintiff's claim. We allow the appeal and dismiss the suit with costs.

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(*Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Spankie.*)

ALI MUHAMMAD (DEFENDANT) v. TAJ MUHAMMAD (PLAINTIFF).*

Muhammadan Law—Pre-emption—Act VI of 1871, *s.* 24.

The right of pre-emption being a right, weak in its nature, where such right is claimed under Muhammadan law, it should not be enforced except upon strict compliance with all the formalities which are prescribed by that law (7).

* Special Appeal, No. 561 of 1876, against a decree of the Judge of Allahabad, dated the 5th April, 1876, reversing a decree of the Munsif, dated the 8th September, 1875.

(1) 9 Moore's Ind. App. 604.
(2) S. A., No. 355 of 1875, decided the 26th August, 1875.
(3) R. A., No. 16 of 1875, decided the 19th August, 1875.
(4) R. A., No. 72 of 1875, decided the 21st April, 1876.
(5) B. L. R., Sup. Vol. 1008 ; S. C., 9 W. R. 505.
(6) 15 B. L. R. 10.
(7) See the following cases,—*Kareemoddeen* v. *Monizoddeen Khan*, H. C. R., N.-W. P., 1866, p. 184 ; *Gholam Hoossein* v. *Abdool Kadir*, H. C. R., N.-W. P., 1873, p. 11 ; *Bhoocaree Dutt* v. *Lohhoo Singh*, W. R., 1864, p. 61 ; *Hosseinee Khanum* v. *Lallun*, W. R., 1864, p. 117 ; *Issur Chunder Shaha* v. *Mirza Nisar Hossein*, W. R., 1864, p 351 ; *Mona Singh* v. *Mosraf Singh*, 5 W. R. 203 ; *Razeeoddeen* v. *Zeenut Bibee*, 8 W. R., 463 ; *Jhotee Singh* v. *Komal Roy*, 10 W., R., 119 ; *Narbhase Singh* v. *Luchmee Narain*, 11 W. R., 307 ; *Prokas Singh* v. *Joyeswar Singh*, 2 B. L. R., A. C. 12 ; *Jadu Singh* v. *Rajkumar*, 4 B. L. R., A. C. 171 ; S. C., 13 W. R. 177 ; *Chamroo Pasban* v *Puhlwan Roy*, 16 W. R. 3 ; *Nubee Buksh* v. *Kaloo Lushker*, 22 W. R., 4; *Elahee Buksh* v. *Bibee Mohan*, 25 W. R., 9.

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Under Muhammadan law the "*talab-i-mawásabat,*" or immediate claim to the right of pre-emption, should be made as soon as the fact of the sale is known to the claimant, otherwise the right is lost, and it was consequently held that the plaintiff, having failed to make the "*talab-i-mawásabat*" until twelve hours after the fact of the sale became known to him, had lost his right of pre-emption (2).

This was a suit for pre-emption founded on Muhammadan law, the parties to the suit being Muhammadans. The facts of the case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Maulvi *Obeidulrahman* and Maulvi *Mehdi Hassan*, for the appellant.

Pandit *Ajudhia Nath* and Munshi *Ram Parshad*, for the respondent.

The judgment of the Court was as follows :—

The "*talab-i-mawásabat,*" or immediate demand, should be made when a person entitled to pre-emption has heard of a sale, on the instant, whether there is any one by him or not, and when he remains silent without claiming the right it is lost,—Baillie's Digest of Muhammadan Law, Bk. vii, ch. iii. The "*talab-i-ishhád,*" or demand with invocation of witnesses, is a calling on witnesses to attest the immediate demand and must take place in the presence of the purchaser or seller or of the premises which are the subject of sale,—Baillie's Digest of Muhammadan Law, Bk. vii, ch. iii.

The Munsif dismissed the claim because it was obvious from the examination of the plaintiff that he did not, on hearing of the sale, immediately, on the instant, claim his right of pre-emption. He heard of the sale in the morning but did not assert his right

(2) In *Karimooddeen* v. *Moeizooddeen Khan*, H. C. R., N.-W. P., 1866, p 184, it was held that the performance of the "*talab-i-mawásabat*" before the registrar, on the registration of the sale-deed, was not a sufficient compliance with Muhammadan law. In *Ram Charan* v. *Narbhir Mahton*, 4 B. L. R., A. C. 216, S. C., 13 W. R. 259, it was held, where the pre-emptor, on hearing of the sale, went to the property in dispute and performed that formality, that the delay was fatal. Where the pre-emptor went into his house to get the money before performing that formality, it was held that he had not complied with the law,—*Mona Singh* v. *Mosrad Singh*, 5 W. R. 203. Where the pre-emptor was sitting when he heard of the sale, and stood up and performed the formality, it was held that there was no delay sufficient to work a forfeiture of his right.—*Maharaj Singh* v. *Buchooh Lall*, W. R., 1864, p. 294, approved of in *Ram Charan* v. *Narbhir Mahton*, supra. In *Amjad Hossein* v. *Kharag Sen Suhu*, 4 B. L. R., A. C., 203, S. C., 13 W. R. 299, it was held that the mere fact of the pre-emptor taking a short time before the performance for ascertaining whether the information conveyed to him was correct or not, did not invalidate his right, and that the law allows a short time for reflection.

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until 7-30 or 8 in the evening. The plaintiff appealed and contended that the delay in making affirmation of his demand did not destroy his right of pre-emption. The Judge, citing a decision of the Calcutta High Court noted in the margin and based upon a decision of the Sudder Dewanny Adawlut in 1857, held that the delay in this case was not such that it interfered with the plaintiff's right of pre-emption. He therefore remanded the case under s. 351 for re-trial on the merits.

Mahomed Waris v. *Hazee Emam-ood-deen* (1).

It is contended here by the special appellant that the delay was fatal. Moreover, the plaintiff had opportunities of asserting his right on the premises and before some labourers at work on the roof, and he neglected to do so, and so lost his right.

It is to be observed that the Munsif laid down as an issue whether or not the plaintiff had fulfilled the conditions of immediate demand, and demand with invocation of witnesses, and his judgment would seem to imply that he did not fulfil the condition of immediate demand, as he heard of the sale in the morning and did not assert his right until 7-30 or 8 P.M. in the evening. On the other hand, the Judge seems to have lost sight of this finding, and to have addressed himself solely to the plea that the affirmation of purchase (before witnesses) in the evening was not such a delay as to vitiate the right of pre-emption. This clearly appears from his citing a judgment in which the question was whether the demand by invocation of witnesses had been made too late.

In special appeal the contention appears to be that neither of the conditions of immediate demand, or demand with invocation of witnesses, has been made. At the same time the third plea seems to confuse both conditions, for it is not necessary that the immediate demand should be made on the premises, though it ought to have been made before the labourers. As the Munsif only received the evidence of one person, who was the plaintiff himself, for it does not appear that any evidence was offered by the defendant, and as the two judgments seem to relate to different demands, we think that we ought to consider what it was that the plaintiff really said, and what was the effect of his admissions.

(1) 6 W. R. 173.

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The plaintiff at the outset of his examination stated that he heard of the sale for the first time on the 16th June in the evening at 5 P.M., when he returned from Court, and saw several men repairing the house in dispute. He asked them on whose part they were making repairs, and they said on the part of Ali Muhammad. "I sent my brother," the plaintiff continued, "in search of Ali Muhammad to his house, but he was not found; at 7-30 or 8 o'clock Ali Muhammad came to my house." But in the after part of his deposition the plaintiff very distinctly stated that he heard at 7-30 A. M. from the labourers that "they were repairing the house on the part of Ali Muhammad, who had purchased the house; after hearing this, I did not say a single word more to the labourers, but I at once sent my brother to Ali Muhammad to call him. I went to Court * * * * * I told my brother only this much, go and call Ali Muhammad, I did not tell him anything more. I made mention about pre-emption for the first time at 7-30 in the evening when Ali Muhammad came."

This evidence justifies the decision at which the Munsif arrived, inasmuch as it shows that the plaintiff did not make the immediate demand on the instant when he first heard of the sale. He should have done so before the labourers. He said that two minutes after leaving the labourers he sent his brother to call Ali Muhammad, but he admits that he did not even before his brother claim the right. Although the plaintiff's intention doubtless was to make the demand to Ali Muhammad had he been found and had come to him in the morning, still the delay in making the immediate demand is such that cannot be remedied. The meaning of the word "*mawásabat*" is literally jumping up (1), and though it has been said that the demand may be made at any time during the meeting at which the information has been received, still even if this were so, in this case it is clear that no demand was made until 12 hours after the plaintiff become aware of the sale, and then it was made at the same time with the demand with invocation of witnesses.

We are not called upon to say whether the Judge has rightly ruled (if he has so ruled) that the delay in making the demand with invocation of witnesses was not too late. The making of this

(1) Baillie's Digest, Bk. vii, ch. iii.

demand is measured by the ability to do so, and the Judge considers apparently that it was made with the least practicable delay. But if the Judge is to be understood as applying this test to the immediate demand, then we think that he is wrong, and that delay in making the immediate demand is fatal, because it must be made at once when the fact of the sale becomes known.

Chundo v. *Hakeem Alimooddeen* (1).

The Full Bench decision of this Court cited marginally ruled that, under s. 24, Act VI of 1871, Muhammadan law is not strictly applicable in suits for pre-emption between Muhammadans not based on local custom or contract, but it is equitable in such cases to apply that law. So in cases relating to gifts it was held in another Full Bench decision (2) that it was equitable as between Muhammadans to apply Act VI of 1871 to such questions. The right of pre-emption is not a strong right, and it appears to us that any one claiming it should be held bound by the conditions of the Muhammadan law, and should promptly assert his right of pre-emption by the immediate demand. It is not surely the duty of the Courts to enlarge the conditions under which so inconvenient and sometimes oppressive a right can be asserted. Following the principle laid down in the Full Bench decisions of this Court already referred to, we think that the judgment of the lower appellate Court is wrong, and that of the first Court should be restored. We, therefore, decree the appeal and reverse the judgment of the lower appellate Court, and restore that of the first Court with costs.

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August 22.

(Mr. Justice Turner and Mr. Justice Spankie.)

IN THE MATTER OF THE PETITION OF RUKMIN AND ANOTHER.*

Act XXVII of 1860, *ss.* 5, 6—*Certificate for Collection of Debts—Security—Appeal.*

No appeal impugning the order of a District Court requiring security from the person to whom it has granted a certificate, under Act XXVII of 1860, lies

* Miscellaneous Regular Appeal, No. 42 of 1876, from an order of the Judge of Cawnpore, dated the 19th May, 1876.

(1) H. C. R., N.-W. P., 1874, p. 28. (2) *Shumshoolnissa* v. *Zohra Beebee*, H. C. R., N.-W. P., 1874, p. 2.