

1887
 May 20.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Straight.

SABIR ALI AND OTHERS (PLAINTIFFS) v. YAD RAM AND OTHERS
 (DEFENDANTS).*

Pre-emption—Wajib-ul-arz—Co-sharers—‘Ek juddi.’

The *wajib-ul-arz* of a village gave a right of pre-emption, in cases of sale, to “brothers”, and provided that, on refusal by a “brother,” there should be a right of pre-emption in favour of co-sharers in the *thoke* who were related to the vendor by descent from a common ancestor (“*hissadaran ek juddi thoke*”). It was also provided that in the event of any dispute arising as to price, it should be settled by arbitration, and that “if the co-sharers do not take at the amount fixed by the arbitrators,” the co-sharer desiring to sell might make the transfer to a stranger.

Held that co-sharers who were not of common descent from the vendor were entitled to pre-emption after own brothers and co-sharers *ek juddi*, and to have preference over strangers. *Guneshee Lal v. Zarat Ali* (1) followed.

THIS was a suit for pre-emption based upon the *wajib-ul-arz* of a village. The provisions of that instrument relating to pre-emption were that in cases of sale a “brother” should have the option of buying, and that, on refusal by a “brother,” there should be a right of pre-emption in favour of co-sharers in the *thoke* who were related to the vendor by descent from a common ancestor (“*hissadaran ek juddi thoke*”). It was also provided that “in case of dispute as to price, it will be settled by appointment of arbitrators before the *hakim*, and that if the co-sharers do not take at the amount fixed by the arbitrators, then he may transfer it to a stranger.” The vendee in this case was a stranger.

The defendants pleaded that, under the provisions of the *wajib-ul-arz*, the plaintiffs who, though co-sharers, were not of common descent with the vendor, were not entitled to pre-emption. The Courts below (Subordinate Judge and District Judge of Saharanpur) accepted this view and dismissed the suit. The plaintiffs appealed to the High Court.

Mr. C. Dillon, Mr. C. Ross Alston, and Maulvi Abdul Majid, for the appellants.

Munshi Hanuman Prasad and Munshi Madho Prasad, for the respondents.

* Second Appeal No. 841 of 1886, from a decree of T. Benson, Esq., District Judge of Saharanpur, dated the 19th February, 1886, confirming a decree of Maulvi Maqsood Ali Khan, Subordinate Judge of Saharanpur, dated the 28th September, 1885.

EDGE, C. J.—I think this case is governed by *Guneshee Lal v. Zoraut Ali* (1). This case will have to be remanded under s. 562. The appeal is allowed.

STRAIGHT, J.—I agree with the learned Chief Justice that the Judge and the Subordinate Judge were in error in dismissing the plaintiffs' claim preferred on the basis of the right of pre-emption, on the ground that, under the terms of the *wajib-ul-arz*, they had no such right. Looking to the language of that document, and more particularly to the clause that "in case of dispute as to price, it will be settled by appointment of arbitrators before the *hakim*, and that if the co-sharers do not take at the amount fixed by the arbitrators, then he may transfer it to a stranger," I agree with the learned Chief Justice that the case of *Guneshee Lal v. Zoraut Ali* (1) is directly applicable, and from the language of the *wajib-ul-arz* before us, it is reasonable to infer that a mere co-sharer is entitled to the refusal after own brothers and co-sharers *ek jaddi*, and to have the preference over strangers. As we are informed that all the necessary evidence is on the record, the proper course, therefore, is to reverse the Judge's decree, he having disposed of the case on a preliminary point, and to direct him to restore the appeal to his file of pending appeals and determine the questions of fact between the parties. Costs to abide the event.

Cause remanded.

Before Mr. Justice Mahmood.

PARAS RAM AND OTHERS (DEFENDANTS) v. SHERJIT AND OTHERS (PLAINTIFFS). *

Co-sharers—Right to deal with joint property—Building by one co-sharer against the wish of others—Suit for demolition of building—Discretion of Court.

The mere fact of a building being erected by a joint owner of land without the permission of his co-owners, and even in spite of their protest, is not sufficient to entitle such co-owners to obtain the demolition of such building, unless they can show that the building has caused such material and substantial injury as could not be remedied in a suit for partition of the joint land. *Lala Biswambhar Lal v. Raja Ram* (2), *Nocury Lall Chuckerbutty v. Bindaban Chunder Chuckerbutty* (3),

* Second Appeal, No. 1349 of 1886, from a decree of Maulvi Syed Farid-ud-din Ahmad, Subordinate Judge of Agra, dated the 26th April, 1886, confirming a decree of Maulvi Nazar Ali, Munsif of Mahaban, dated the 27th November, 1886.

(1) N. W. P. H. C. Rep., 1870,

p. 343.

(2) 3 B. L. R., App. 67.

(3) 1. L. R., 3 Calc. 708.

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