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

1887
November 12.

BALWANT SINGH (PLAINTIFF) *v.* SUBHAN ALI AND ANOTHER (DEFENDANTS).*

Pre-emption—Wajib-ul-arz—"Pattidars"—"Chakdars."

Held that the terms of a *waj'b ul-arz* conferring a right of pre-emption upon "*pattidars*" did not apply to a *chakdar* holding a share in the same *chak* as the vendor.

THIS was a suit for pre-emption based on the *wajib-ul-arz* of a village, which gave a right of pre-emption to "*pattidars*" in cases of transfer. The clause of the *wajib-ul-arz* relating to pre-emption was as follows:—"If any *pattidar* wishes to sell or mortgage a part or whole of his property, at first he will have to offer it to his brother or brother's son or a member of the same family on a proper consideration. In case of their refusal he will transfer to the other co-sharers, and they will have to pay the same price as offered by the stranger; and in case of the latter's refusal he will have power to mortgage or sell it to any one he likes."

The facts of the case are set out in the following judgment of the lower appellate Court (District Judge of Allahabad) dismissing the suit:—

"This is a claim of pre-emptive right. The plaintiff-appellant and the vendor are '*chakdars*' holding shares in the same *chak*. The question at issue is whether the right of pre-emption under the *wajib-ul-arz* extends to *chakdars* or not.

"I have no hesitation in deciding that it does not.

"The terms of the pre-emption clause clearly restrict its operation to 'pattidars,' and it is well understood that the object of the provision is in all cases to exclude strangers, and a *chakdar* would not ordinarily be one of the co-parcenary community, nor is it asserted that the appellant is so.

"It is, however, ingeniously contended that a *chakdar*, inasmuch as he is a proprietor paying revenue, is as much a sharer in the mahál as a pattidar, and that the circumstance of his owning a certain area of land instead of a fractional share does not affect his status as a sharer in the mahál.

* Second Appeal No. 1390 of 1886 from a decree of F. E. Elliot, Esq., District Judge of Allahabad, dated the 4th June, 1886, confirming a decree of Pandit Indar Narain, Munsif of Allahabad, dated the 11th December, 1885.

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"A ruling, *Niamat Ali* v. *Asmat Bibi* (1), has been referred to, to show that the expression '*hakiyat*' has been held to mean any land held under a proprietary title, such as a grove, &c., and not merely a fractional share; and it is argued that a '*chak*' thus comes within its scope, and *therefore* within the pre-emption clause, in which the word '*hakiyat*' is used.

"The fallacy of this argument is patent. The '*chakdar*' is a proprietor *in* the *mahál* no doubt, but he is not a pattidar or co-sharer of the mahâl. The word '*hakiyat*' may no doubt include a '*chak*,' but that is not the point, which is, whether a '*chakdar*' can claim the right to pre-emption, and not whether, if an acknowledged pattidar should sell a '*chak*,' a right of pre-emption could be raised by another pattidar, to which latter case the ruling might apply. To the present case it does not.

"The fact that the *chakdars* are entered in the *khewat* and *wajib-ul-arz* does not advantage the appellant as it is contended on his behalf that it does. In the *khewat* they are necessarily entered, as they pay a quota of the Government demand and own proprietary rights, but they are even in that distinguished and separated from the pattidars.

"In the *wajib-ul-arz* they are similarly dealt with in the category of inferior proprietors.

"The difference between a '*pattidar*' and a '*chakdar*' is apparent in the fact that the former is jointly responsible with his follow-pattidars for the payment of the Government demand assessed on the mahál, and in the undivided part of a mahál has rights in each biswa, but no separate rights in any particular biswa, whereas the latter is responsible for his own quota of the revenue only, and owns a certain area which is all his own, while he has no right outside it.

"Neither party has produced any evidence to prove whether the *chakdars* were admitted to enjoyment for payment of the Government demand, but there can be no doubt that they were not.

"Failing the contention that a '*chakdar*' is as much a sharer in the mahal as a 'pattidar,' and therefore has a good claim to

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the right of pre-emption, it is argued that '*chakdars*' have at least the same right among themselves within the limits of their '*chak*' that the pattidars have in the whole mahál. This again is an ingenious but untenable proposition.

"The pre-emptive clause applies to pattidars only; there is no provision for its extension to *chakdars* even within the limits of their *chak*. This appears to me to be too obvious to require further remark.

"The appeal is dismissed with costs."

The plaintiff appealed to the High Court, on the ground that the terms of the *wajib-ul-arz* were applicable to *chakdars*.

Munshi *Ram Prasad*, for the appellant.

Mr. *Amiruddin* and Maulvi *Abdul Majid*, for the respondents.

EDGE, C. J.—The judgment of Mr. Elliot is a very clear judgment. I approve of that judgment. I think Mr. Elliot's conclusions are correct. The appeal is dismissed with costs.

STRAIGHT, J.—I concur.

Appeal dismissed.

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

1887 *November* 25.

AHMAD ALI KHAN (PLAINTIFF) *v.* HUSAIN ALI KHAN (DEFENDANT). *

Act XV of 1877 (*Limitation Act*), *sch. ii, Nos.* 60, 127—"*Joint family property*"—"*Exclusion*" *from such property.*

A Muhammadan family consisting of three brothers and their uncle jointly owned certain immoveable property which the uncle managed. Two of the brothers effected a settlement of accounts with the uncle, with reference to the profits of the estate; the share of the three brothers was appropriated; and the money representing that share was deposited with the uncle. Subsequently the two who had effected the settlement withdrew their portion of the common share, and the third brother sued the uncle to recover a sum of money as his one-third portion. He alleged that he had been deceived by the defendant into supposing that his portion was included in the amount withdrawn by his brothers; but he did not base his suit upon any allegation of fraud. It was contended that art. 127, sch. ii. of the Limitation Act (XV of 1877) applied to the suit, limitation running from a date whereon the defendant had denied all liability in respect of the plaintiff's demand.

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* First Appeal No. 216 of 1885 from a decree of Maulvi Muhammad Maksud Ali Khan, Subordinate Judge of Saháranpur, dated the 17th August, 1885.