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is no longer open to us in second appeal to consider the validity of that order. Orders of remand such as s. 562 contemplates are necessarily orders of an interlocutory character because they do not definitely purport to dispose of the litigation with which they deal. Such orders may no doubt be appealed from, and the Court of appeal can adjudicate on them with such power as to finality as the appellate Court possesses. But when in a case such as this such order is not appealed from, and, having been carried out, adjudication in pursuance thereof has been made, I do not think that the circumstance of such order not being appealed from would preclude the parties from bringing up such questions when the final decree in the case has been made and is rendered the subject of an appeal. The learned Chief Justice has stated why this should be so on legal reasoning, and indeed, if any further reason were required, I should say that the rulings of their Lordships of the Privy Council in *Maharajah Moheshur Sing* v. *The Bengal Government* (1), *Forbes* v. *Ameeroonissa Begum* (2) and *Shah Mukhun Lall* v. *Baboo Sree Kishen Singh* (3) were authorities for this proposition. These rulings proceeded no doubt on earlier law, but I am not aware that the rule has been modified in the Civil Procedure Code by which this case is covered. The effect of this view is to agree with the decree of the learned Chief Justice.

Appeal allowed in part.

FULL BENCH.

1888
June 2.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Brodhurst and Mr. Justice Mahmood.

KHUMAN SINGH AND OTHERS (DEFENDANTS) *v.* HARDAI (PLAINTIFF).*

Pre-emption—Wajib-ul-arz—Construction—"Karibi", meaning of.

The word "*karibi*" used by self in the pre-emptive clause of a *wajib-ul-arz* to indicate shareholders "near" to the vendor, is ambiguous and inadequate to express the intentions of the shareholders.

(1) 7 Moo. I. A., 283. (2) 10 Moo. I. A., 340
(3) 12 Moo. I. A., 157.

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The pre-emptive clause in the *wajib-ul-arz* of a village gave a right of pre-emption, in cases of sale by shareholders, first to "*bhai hakiki*" (own brothers), next to "*karibi*" (near), and next to co-sharers in the same *thoke* as the vendor.

Held that although the word "*karibi*" must be read in connection with the preceding word "*bhai*," the words "*bhai karibi*" could not reasonably be confined to cousins, but must be construed as meaning "*bhai band*" or "*bhai log*," so as to include all near relatives, both male and female.

Held also that a vendor's father's brother's widow, holding a share in the village absolutely and as heir of her deceased husband, was entitled to pre-emption in preference to the vendees, who were only sharers in the same *thoke* as the vendor.

THIS was a suit for pre-emption, based on the follwing clause in the *wajib-ul-arz* of a village :—

"A shareholder wishing to sell his share, will sell it (*i.e.*, offer it for sale) at a fair price, first to a *bhai hakiki* (an own brother), after that to *karibi* (near), after that to a sharer in the *thoke* or in a second (or another) *thoke*."

The plaintiff was one Musammat Hardai, widow of one Jawahir Lal. The vendors (who did not contest the claim) were her nephews—sons of her husband's brother. The defendants-vendees were sharers in the village, and in the same *thoke* as the plaintiff. Among other pleas they contended (i) that the plaintiff was not a sharer within the meaning of the *wajib-ul-arz*, as she was in possession of the share by virtue of which she claimed, by way of maintenance as a Hindu widow, and not by right of inheritance, (ii) that assuming her to be a sharer, she did not come within the category of "*karibi*," and so had no right preferential to their own.

The Court of first instance (Subordinate Judge of Meerut) dismissed the suit. The Court observed :—

"Now the question is whether the plaintiff in this case, who is the aunt of the vendors, that is, the vendors' father's brother's wife, comes within the word '*karibi*'. Reading the word '*karibi*' with the preceding words '*bhai hakiki*', there remains no doubt that these words *hakiki* and *karibi* (real and near) are used in connection with the world *bhai* (brother), and that they both qualify the same word *bhai*. In fact, I see that no other construction can reasonably be

put to it. Whoever else may come under the words *bhai karibi*, I do not think that a female relative, such as the plaintiff, can be brought within those words. If the words *bhai hakiki* and *bhai karibi* be construed strictly, they would not include any but the brothers and cousins; by a broader construction, as the word *bhai* sometimes is used in vernacular common dialogue, it may mean and include some other male near relatives; but to include an aunt in the word *bhai* would certainly be going too far, and giving it a meaning which is never applied to it. I am of opinion that the second issue must be decided against the plaintiff, and the plaintiff's case must fall with this finding. The vendees being also sharers in the *thoke*, the plaintiff has no preferential right over the vendees. It is not now necessary to go into the other issues. I dismiss the plaintiff's case on the above finding, and order her to bear the costs of both sides."

On appeal, the District Judge of Meerut, being "clearly of opinion that the appellant as the widow of a *karibi* relative of the vendors, holding her husband's share by inheritance, is entitled to pre-emption", reversed the first Court's decision, and remanded the case, under s. 562 of the Civil Procedure Code, for trial on the merits. On the remand, the Court of first instance decided the remaining issues in favour of the plaintiff, and so decreed the claim. On appeal, the District Judge affirmed the decree. The defendants appealed to the High Court.

On the 24th January, 1888, the appeal came for hearing before Edge, C. J., and Brodhurst and Mahmood, JJ., who made an order, the material portion of which was as follows:—

"We remand this case under s. 566 of the Code of Civil Procedure for a finding as to whether at the date of the sale, and at the date of the commencement of this action, the plaintiff was in possession of the share in the *thoke* by way of maintenance or by right of inheritance. The share to which we refer is the share by reason of which her pre-emptive right is alleged to accrue."

To this remand, the lower appellate Court returned a finding to the effect that at the dates mentioned the plaintiff held her

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share absolutely, by right of inheritance to her deceased husband. No objections were filed to this finding.

The Hon. Pandit *Ajudhia Nath* and Munshi *Ram Prasad*, for the appellants.

The Hon. *T. Conlan* and Pandit *Bishambhar Nath*, for the respondent.

BRODHURST, J.—Plea No. 1 was withdrawn before we remanded the case under s. 566 of the Civil Procedure Code. The finding on the issue we remanded, namely, "whether at the date of the sale and at the date of the commencement of the action, the plaintiff was in possession of the share in the *thoke* by way of maintenance or by way of inheritance," is in the plaintiff's favour, the lower appellate Court having found that Musammat Hardai held her share absolutely as the heir of her deceased husband, Jawahir Lal, and was thus in enjoyment of it at the time of the sale, and to this finding no objection has been taken. The only other plea that on the former occasion was seriously pressed is No. 2; thus the sole point that remains for consideration is as to the meaning of the *wajib-ul-arz*. The passage in dispute is as follows :—"A shareholder wishing to sell his share will sell it (*i.e.*, offer it for sale) at a fair price, first to a *bhai hakiki* (own brother), after that to '*karibi*' (near), after that to a sharer, in the *thoke* or in a second (or another) *thoke*." The question here is, what is the meaning of the word "*karibi*"?

The difficulty that has arisen on this part of the case is owing to a word having been used that is ambiguous and inadequate to convey clearly the intentions of the shareholders. Obscure language such as that above referred to, should not be permitted by any settlement officer to be made use of in a *wajib-ul-arz*.

I have referred to several dictionaries, including those of Forbes, Wilson, Shakespear, Richardson, and Fallon. In none of them is the word "*karibi*" mentioned, but "*karib*" is shown in all of them to mean near either in space or relationship. In Wilson's Glossary, the meanings of the word are given as "near

near to, also near in relationship, a kinsman, a relative, a connection by birth or marriage excepting the relation of parent and child." "*Karibi*" apparently is not a word that could correctly be used alone, as are the words *karabat-daran* or *rishtadaran* to denote relations, and so far as I can learn it is not generally so used even by uneducated persons.

The first Court—the Subordinate Judge of Meerut—observes, "Now, the question is whether the plaintiff in this case, who is the aunt of the vendors, that is, the vendors' father's brother's wife comes within the word '*karibi*.' Reading the word "*karibi*" with the preceding words '*bhai hakiki*' there remains no doubt that both these words '*hakiki*' and *karibi* (real and near) are used in connection with the word *bhai* (brother), and that they both qualify the same word *bhai*. In fact, I see that no other construction can be reasonably put to it. Whoever else may come under the words *bhai karibi*, I do not think that a female relative such as the plaintiff can be brought within those words. If the words *bhai karibi* and *bhai hakiki* be construed strictly, they would not include any but the brothers and cousins. By a broader construction, as the word *bhai* sometimes is used in vernacular common dialogue, it may mean and include some other male near relations, but to include an aunt in the word *bhai* would certainly be going too far and giving it a meaning for which it is never applied." I agree with the Subordinate Judge in thinking that the word *karibi* as well as the word *hakiki* must be read in connection with the word *bhai*.

I was at first much impressed by the arguments of the learned pleader for the appellants, and was strongly inclined to think that the Subordinate Judge had placed a right interpretation on the words above referred to, and I was more especially inclined to think so as the lower appellate Court had given no reason whatever for arriving at a different conclusion; but, having regard to some remarks that fell from my brother Mahmood at the first hearing of the case, I consider that that although *karibi* must be read in connection with the preceding word *bhai*, the words *bhai karibi* must

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be held to include more than cousins; for it appears unreasonable to suppose that the shareholders of the village in question can have intended to allow the right of pre-emption to a second or third cousin and to deny it to a father or an uncle or even to a paternal nephew, who among Hindus is frequently regarded with almost, if not as strong, affection as an own son.

Our attention has been drawn to the judgments in an earlier case, Second Appeal No. 316 of 1886, from the same district of Meerut (1). In that case, the lower appellate Court, the then Judge of Meerut, in considering similar words in a *wajib-ul-arz* observed: "The decision in this case depends on the interpretation to be put on the *wajib-ul-arz*. That document lays down that an own brother and then a *karibi* and then a co-sharer should have the option of purchase. The words are "*awul bhai hakiki ba bhai karibi*." The lower Court holds that the word *bhai* governs the word *karibi* and that it is own brothers and then near brothers or cousins that have the preference, and that after them all co-sharers are equal, and consequently the plaintiff and the purchaser both being sharers, the plaintiff has no right of pre-emption over the defendant, the purchaser. In the opinion of this Court the words in the *wajib-ul-arz* mean that after own brothers, persons *karibi*, that is, in any way connected, have a right of pre-emption, and that the word *karibi* is not confined to cousins. Even supposing that the word *karibi* is governed by the word *bhai*, the Court holds that the word *bhai* cannot be confined to cousins, but that the word is used in a much wider sense and means *bhai bund*. Connections, however distant, being of the same stock, are called *bhais*. Under either interpretation the Courts holds that the plaintiff has a preferential right of pre-emption."

A Bench of this Court Edge, C. J., and Straight, J., in disposing of that second appeal, remarked: "It seems to us that the Judge has placed a reasonable construction upon the *wajib-ul-arz*, and one which we ought not to distrub," and the appeal was accordingly dismissed

(1) Not reported.

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I am now of opinion that the point was properly decided, and I may add that if in the present case the words *bhai karibi* were intended to refer to cousins only, there was no necessity to have previously used the words *bhai hakiki*, as an own brother would have been included in the words *bhai karibi*, he being not only a near *bhai* but the nearest "*bhai*" of all. Moreover, if own brothers and cousins were the only relations that were to be allowed to pre-empt, own brothers having been clearly mentioned, cousins should not have been referred to in the words *bhai karibi*, but should have been described by the words "*bhai chachera*," "*phuphera*," "*mamera*," "*mausera*," according to the intentions of the shareholders.

Having regard to the considerations above mentioned, I think that in order to obtain the meaning intended by the co-sharers, we must not only read the words *karibi* with the word *bhai*, but must also regard the word *bhai* as meaning *bhai band* or *bhai log*, so that *bhai karibi* shall include all near relations both male and female.

Under these circumstances I am of opinion that this appeal should be dismissed with costs.

EDGE, C. J.—I am of the same opinion.

MAHMOOD, J.—So am I.

Appeal dismissed.

PRIVY COUNCIL.

P. C.
J. C.
June 21 *and July* 7
1888

BASSU KUAR AND OTHERS (PLAINTIFFS) *v.* DHUM SINGH (DEFENDANT.)

[On appeal from the High Court for the North-Western Provinces..]

Act XV of 1877 (*Limitation Act*) *sch. ii, Nos.* 64 *and* 97—*Act IX of* 1872, (*Contract Act*) *s.* 65.

Money due on an account stated which would, as such, have been barred in three years from the statement, under Act XV of 1877, sch. ii, art. 64, becomes, for purposes of limitation, a debt of another character, when, it having been the subject of an

Present: The EARL OF SELBORNE, LORD HOBHOUSE, LORD MACNAGHTEN, SIR B. PEACOCK, and SIR R. COUCH.