

In my opinion that was not a mere money-suit. That was a suit which by operation of law affected the immovable property of Siruli and was directed towards obtaining from that property, Siruli, what by law it was bound to contribute under s. 82 of the Transfer of Property of Act. Now it is not denied that, pending that suit, and obviously for the purpose of defeating the just claim of the plaintiff, Siruli was transferred by Nath Mal Das to the present defendant, Baldeo Sahai. In my opinion this was a transfer *pendente lite* which would come within s. 52 of the Transfer of Property Act, and any such transfer so made would convey to the transferee that property with all the imperfections upon its head that it would be subject to under the suit that was then pending. Consequently the defendant, Baldeo Sahai, took the property in and under circumstances that constrain him to hold that property subject to the decree that was passed in that suit. The aim and object of the principle of *lis pendens* is to avoid multiplicity of litigation, and if some such doctrine were not to hold good, the party to a litigation in which immovable property was concerned might part with that property to a dozen different transferees, with the result that a dozen different suits would have to be brought for setting aside those transfers. For the reasons I have given I hold that the decree of the lower appellate Court is right, and that this appeal should be and it is dismissed with costs.

KNOX, J.—I concur.

*Appeal dismissed.*

*Before Mr. Justice Straight and Mr. Justice Knox.*

JASODA NAND AND ANOTHER (DEFENDANTS) v. KANDHAIYA LAL  
(PLAINTIFF).\*

1891  
May 23

*Pre-emption—Wajib-ul-arz, construction of—Muhammadian Law.*

In a suit for pre-emption based on a *wajib-ul-arz* the material words of the *wajib-ul-arz* under the heading of "Custom for pre-emption" were as follows:—"At the time a proprietary share is transferred a right of purchase will vest, first, in a

\* Second Appeal No. 1594 of 1888 from a decree of J. Deas, Esq., District Judge of Jaunpur, dated the 30th July 1888, reversing a decree of Maulvi Muhammad Said Khan, Subordinate Judge of Jaunpur, dated the 19th March 1888.

1891

JASODA NÁND  
v.  
KANDHAIYA  
LAL.

co-sharer of the same family, and then in the other co-sharers of the village in preference to a stranger, provided that the same price is paid by the co-sharer as is offered by the stranger."

*Held* that these words were intended to define a special custom of pre-emption, and did not merely mean that the custom of pre-emption according to the Muham-madan law was to be followed.

*Ram Prasad v. Abdul Karim* (1) distinguished.

The facts of this case sufficiently appear from the judgment of the Court.

Mr. D. Banerji, for the appellants.

Pandit *Sundar Lal*, for the respondent.

STRAIGHT, J. (KNOX, J., concurring).—This was a suit for pre-emption and the vendee is the appellant. The plaintiff is an admitted co-sharer within the terms of the *wajib-ul-arz* and the defendant is a stranger. The terms of the *wajib-ul-arz* are as follows, under the head of "custom for pre-emption":—"At the time a proprietary share is transferred a right of purchase will vest, first, in a co-sharer of the same family, that is, of the vendor, and then in the other co-sharers of the village, in preference to a stranger, provided that the same price is paid by the co-sharer as is offered by the stranger."

The Court below has decreed the claim, and it is contended by Mr. Banerji on behalf of the vendee-appellant that this passage in the *wajib-ul-arz* merely defines the parties entitled to enjoy the custom of pre-emption and that it does not specify or define the custom, which must be looked for in the Muhammadan law, which law, in the absence of contract or custom to the contrary, supplies the custom. In support of this view, he called our attention to the case of *Ram Prasad v. Abdul Karim* (1) which was a considered judgment of the learned Chief Justice and my brother Mahmood. It seems to me that that case is clearly distinguishable and that the language used there in the *wajib-ul-arz* is wholly different from that used here. There the words of the *wajib-ul-arz*

(1) I. L. R., 9 All. 513.

were—"the custom of pre-emption prevails according to the usage of the country," and, as I understand the learned Chief Justice, there was no evidence in that cause beyond the declaration contained in the *wajib-ul-arz* of what the nature of the custom was, and the learned Chief Justice therein said, what I entirely agree in, namely, that where such general terms are used, the custom that must be looked for is that custom which mostly prevails, *viz.*, the custom as recognised by the Muhammadan law. But in the present case it appears to me that the *wajib-ul-arz* itself defines and declares what the custom is, and that within the four corners of the paragraph to which I have called attention the mode in which that custom is to be exercised and regulated is specifically fixed, in other words, that the right of pre-emption vests primarily in the co-sharer *ek jaddi*, and secondly in the co-sharer of the village, and that as to both of them there is this proviso that they must give the same price for the property sold as a stranger was prepared to give for it. The interpretation that I have placed upon the case of *Ram Prasad v. Abdul Karim* (1) is consistent with what the learned Chief Justice himself said in *Husain Khan v. Umedi Bibi* (2) and in unison with the remarks of Mahmood, J., in *Muhammad Rustom Ali Khan v. Niadar Singh* (3). I therefore think that the claim of the plaintiff was rightly decreed, and he was entitled to pre-empt the property in suit. While dismissing the appeal with costs, we direct, in accordance with the rule laid down in the recent Full Bench of this Court, that the time for the payment of money be extended to the 1st of August 1891, and the decree will declare that if the money is paid in by that date, the plaintiff will get the property, and if the money be not paid by that date, the plaintiff's suit will stand dismissed with costs. To leave no doubt upon the question, I think it well to add that in the event of the money being paid in by the specified date, the plaintiff will have his costs in all the Courts.

*Appeal dismissed.*

(1) I. L. R. 9 All. 513. (2) Weekly Notes, 1889, p. 192.

(3) Weekly Notes, 1886, p. 114.