

Limiting my rule, therefore, to these circumstances, and limiting the rule which I have laid down to the exigencies of this case, I would dismiss the appeal, and allowing the cross-objections raised by the plaintiff-respondent, set aside so much of the decrees of the lower Courts as dismiss the suit, and, following the principle of s. 100 of the Transfer of Property Act (IV of 1882), would frame a decree in terms of s. 88 of that enactment, fixing a period of six months for payment of the money, and in default of such payment awarding sale in enforcement of the plaintiff's lien.

1892

SETH CHITTOOR
MAL
v.
SRIB LAL.

APPELLATE CIVIL.

1891.

November 23.

Before Mr. Justice Mahmood.

SHAR NARAIN PANDÉ (PLAINTIFF) v. RAM PRASAD MISR AND ANOTHER
(DEFENDANTS).*

Pre-emption—Wājib ul-arz—Gift—Shankalp.

No right of pre-emption arises where land is assigned without consideration as *shankalp*.

The facts of this case sufficiently appear from the judgment of Mahmood, J.

Munshi *Gobind Prasad* for the appellant.

Munshi *Mudho Prasad* for the respondents.

MAHMOOD, J.—This is a second appeal in regard to a dispute of which the facts are sufficiently clearly stated in the judgment of the lower appellate Court, which Court also framed the issues which arise in the case.

Briefly put, the matter relates to a transaction of the 29th of June 1887, when the defendant-respondent, Harihar Pandé, by an application for mutation of names, applied for and obtained the entry of the name of Ram Prasad Misr in the Government revenue records in respect of the property now in suit.

* Second Appeal No. 1408 of 1889, from a decree of Maulvi Muhammad Mazhar Husain, Additional Subordinate Judge of Gorakhpur, dated the 12th September 1889, confirming a decree of Pandit Alopi Prasad, Munsif of Basti, dated the 24th April 1888.

1891

HAR NARAIN
PANDÉ
P.
RAM PRASAD
MISR.

Thereupon the present plaintiff-appellant, Har Narain Pandé, dissatisfied with the transaction above mentioned, came into Court suing to enforce his right of pre-emption in respect to the transaction of the 29th of June 1887. Now this transaction is described as *shankalp*, and it has been found that it was a pure gift without any pecuniary consideration for it, and that it was not a sale, and upon this ground both the Courts below have concurred in dismissing the suit.

From these two concurrent decrees this second appeal has been preferred, and Mr. *Gobind Prasad* in his argument has relied upon the ruling of the majority of this Court in the Full Bench case of *Janaki v. Girjalat* (1), where the majority of the Court laid down a proposition of law from which I had the misfortune to dissent. The learned vakil has also relied upon two unreported rulings of this Court in F. A. No. 170 of 1886 and F. A. No. 171 of 1886, which were decided by the present learned Chief Justice and my brother Tyrrell on the 22nd of February 1889.

Now in disposing of the case I do not wish to consider these various rulings in detail, because in my opinion the whole point upon which Mr. *Gobind Prasad's* argument rests is that according to the terms of the *wājib-ul-arz* in the case not only does pre-emption arise in respect of sale and mortgage, but also in respect of a simple gift without valuable consideration. The learned vakil in so arguing has invited my attention to the terms of the *wājib-ul-arz* in the two unreported cases above mentioned, and I think I may say that there is perhaps some cogency in the analogical comparison which he drew from the terms of the *wājib-ul-arz* in those cases as supplying a rule of interpretation for this *wājib-ul-arz* also. But, be it as it may, I think the exigencies of this case require me only to interpret this *wājib-ul-arz*, which is the document before me, and of which s. 6 relating to pre-emption runs as follows:—

چھتویں پہلے کہ ہماوگوں میں اپنا حصہ کل یا جزو بذریعہ بیع و رهن
وغیرہ کے جدا کیا چاہے تو پہلے حصہ دار کے ہاتھ بیچے و اگر وہ نہ لیوے تب

(1) I. L. B., 7 All. 482.

اختیار انتقال بدست غیر ہوگا اگر بلا اطلاع حصہ دار غیر کے ہاتھ منتقل
 کرے تو وہ حق شفعہ کی ذریعہ سے ناجائز ہوگا فقط *

1891

HAR. NARAIN
PANDEv.
RAM PRA-
SAD MISE.

Now the words upon which Mr. *Gobind Prasad* relies most are two. The first is the use of the word 'غیرہ' or "*et cetera*" after the words "بیع رہن", "sale and mortgage," and the second word upon which the learned vakil relies is the word "انتقال" or "transfer," which occurs later on in the pre-emptive clause. I am of opinion that, although the clause is not so clearly worded as it might have been, the rule of interpretation is well recognized, that where words describing one class of objects are employed and followed by the words "*et cetera*," or words of a like signification, it must be understood that they are limited to that class of objects. Here it is clear to my mind what "بیع" and "رہن" mean, one meaning "sale" and the other "mortgage," and the term "*et cetera*," "غیرہ," which is employed thereafter, does not render the right of pre-emption available in respect of any such transaction as a simple gift, that is to say, gift without consideration, or a *shankalp* as in this case. I am fortified in this interpretation by the use of the word "بیچ" that is to say "sell," which occurs later on in the clause, and in view of these words the generic term "انتقال" or "transfer" does not in my opinion extend the right of pre-emption to any transfer which may be without pecuniary consideration.

Moreover, I have frequently said that in such cases of pre-emption, though based upon the *wajib-ul-arz*, in case of doubt or difficulty the principles of the Muhammadan law of pre-emption, which originated the right in India, should be applied, and here the finding being clear that the *shankalp* complained of was without pecuniary consideration and was a simple gift, it follows that no right of pre-emption would exist.

I therefore hold that the Courts below acted rightly in dismissing the suit, and I dismiss the appeal with costs, as the respondent is represented by Mr. *Becha Ram* holding the brief of Mr. *Madho Prasad*.

Appeal dismissed.