

We were also referred to *Shuikh Karim Bulsh v. Kame-ul-deen Ahmad* (1). The precedent upon which the Court of first instance originally decided the case seems to us directly in point and conclusive upon the question. The head-note there runs as follows:—“According to the Muhammadan law a partner has a right of pre-emption in villages or large estates. But a neighbour cannot claim such right on the ground of vicinage.” We have examined the judgment and find that it fully bears out the head-note cited to us. In the present instance the appellant was really no more than a neighbour, and we have not been referred to, nor have we ourselves found, any authority in the Muhammadan law which gives such a neighbour a right of pre-emption in a distinct and adjoining *mahál* solely on the ground of vicinage. Under these circumstances it is unnecessary for us to consider whether or not the preliminaries of the Muhammadan law were observed. We dismiss the appeal with costs.

Appeal dismissed.

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

JWALA PRASAD (DECREE-HOLDER) v. RAM NARAIN (JUDGMENT-DEBTOR).*

Act 1 of 1879, s. 46; sch. i art 16—Stamp—Sale Certificate—Sale subject to incumbrance.

Where property subject to an incumbrance is sold by auction in execution of a decree, the sale certificate should be stamped according to the amount of the purchase money, and not according to the amount of the purchase money together with the incumbrance.

This was a reference to the High Court by the Board of Revenue, under s. 46 of the Indian Stamp Act, 1879.

In this case in execution of a decree between the above-named parties a house was sold by public auction for Rs. 550, subject to a lien of Rs. 3,909. The sale having been confirmed, a certificate was granted to the purchaser on a stamp of Rs. 6 calculated on the amount of the actual purchase money. This document was

* Miscellaneous Application No. 135 of 1892 being a Reference by the Board of Revenue under the Indian Stamp Act, 1879.

(1) 6 N. W. P. H. C. Rep., 377.

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impounded by the Sub-Registrar of the Agra Municipality under s. 33 of the Stamp Act, he holding that it was liable to a duty of Rs. 45 calculated on Rs. 550, the purchase money, plus the amount of the incumbrance, namely Rs. 3,909. The Sub-Registrar in due course submitted the document to the Collector, and that officer being in doubt as to the correct stamp, owing to the existence of several conflicting rulings of other High Courts on the point, referred the question to the Board of Revenue. The Board of Revenue thereupon referred the case to the High Court, calling attention to certain rulings on the point in question, *viz.*, *Meer Kaisur Khan Murad Khan v. Ebrahim Khan Musa Khan* (1). *In the matter of a reference to the Board of Revenue* (2). *Reference under Stamp Act*, s. 46 (3), (4).

On this reference the following opinion was pronounced :—

EDGE, C. J., TYRRELL and BLAIR, JJ.—In this case the property was sold at an auction sale, subject to an incumbrance. The simple question is whether the stamp on the sale-certificate should be calculated on the amount of the purchase money or on the amount of the purchase money plus the amount of the incumbrance. We have not the slightest doubt that the stamp must be calculated on the amount of the purchase money. The incumbrance constituted no part of the consideration. The interest which was represented by the incumbrance, that is, the mortgagee's interest, did not pass by the sale.

Let the Board of Revenue be informed that this is our opinion.

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

NIJAZ-ULLAH KHAN (DEFENDANT) v. NAZIR BEGAM (PLAINTIFF).*

Civil Procedure Code, s. 13—Res Judicata.

One Musammat Nazir Begam brought a suit against a lambardar for her share in the profits of a certain *mahdl*, her claim being based upon an assignment executed

* Second Appeal No. 974 of 1890 from a decree of Munshi Mata Prasad, Subordinate Judge of Bareilly, dated the 5th August 1890, modifying a decree of Maulvi Siraj-uddin, Munsif of Bareilly, dated the 9th November 1889.

(1) I. L. R., 15 Bom. 532.

(2) I. L. R., 10 Cal. 92.

(3) I. L. R., 5 Mad. 15.

(4) I. L. R., 7 Mad. 421.