

not proved, and accordingly dismissed the claim. On appeal, the District Judge of Saharanpur affirmed the decree, being of opinion that the plaintiffs had not established a right preferential to that of the defendant-vendee.

In second appeal, it was contended on behalf of the plaintiffs that, "as it was admitted that in the town of Muzaffarnagar the custom existed, it must be presumed to exist in this *mohalla* also," and that "the appellants as neighbours have a preferential right to purchase."

Lala *Lalta Prasad*, for the appellants.

Munshi *Kashi Prasad*, for the respondents.

PETHERAM, C. J.:—This appeal must be dismissed with costs. I agree with the learned Judge in his decision, but not altogether for the reasons assigned by him. The suit was based on a wrong idea as to the custom of pre-emption asserted by Hindus. Pre-emption is a right which is known to the Muhammadan Law. It is not fixed to the land or country, but follows the persons of Muhammadans wherever they may be in the world. Among Hindus, on the other hand, it is a matter of contract or custom agreed to by the members of a village or community. When it is said that such a custom is attached to the land, I do not think that is a correct description. A community of Hindus may agree to be governed by the custom of pre-emption, but the moment they sell to a stranger to the agreement, there is no pre-emption attaching to the land. I think there is no ground for declaring such a custom to exist. The Judge was right in his decision, and this appeal must be dismissed with costs.

TYRRELL, J., concurred.

Appeal dismissed.

Before Sir W. Comer Petheram, *Kt.*, Chief Justice, and Mr. Justice Tyrrell.

HANUMAN RAI (PLAINTIFF) *v.* UDIT NARAIN RAI AND OTHERS (DEFENDANTS).*

Pre-emption—Wajib-ul-arz—Transfer under compromise and decree thereon to person claiming pre-emption.

An appeal having been preferred from a decree in a suit for pre-emption, based on the *wajib-ul-arz* of a village, the parties to the suit entered into a compromise.

* Second Appeal No. 1501 of 1884, from a decree of Lala Mata Din, Officiating Subordinate Judge of Gorakhpur, dated the 16th June, 1884, reversing a decree of Maulvi Ahmad Ali Khan, Munsif of Banaganj, dated the 19th March, 1884.

1885

HANUMAN
RAI
v.
UDIT NARAIN
RAI.

whereby the plaintiff-pre-emptor relinquished his claim to a part of the property in dispute in favour of the defendants-vendees, and the latter admitted his claim with respect of the remainder of the property. Upon this compromise a decree was passed. Subsequently a co-sharer in the village where the property was situate brought a suit for pre-emption upon the contention that the compromise and the decree passed thereon amounted to a transfer to the plaintiff in the former suit, within the meaning of the *wajib-ul-arz*.

Held that the suit was not maintainable.

THIS was a suit to enforce a right of pre-emption based on the *wajib-ul-arz* of a village, which gave the right to co-sharers in cases of "transfers" or sales to strangers. The plaintiff Hanuman Rai, together with defendant No. 2, Ganga Din (who was a stranger) and other persons, had purchased shares in two villages, Siri and Kharang, under a joint sale-deed. Thereupon the respondent in this case, Udit Narain Rai, brought a suit for pre-emption in respect of the sale, excluding the share purchased by the plaintiff, and obtained a decree, and paid the consideration-money into Court within the period prescribed. An appeal was preferred from the decree, and the parties entered into a compromise, whereby the plaintiff-pre-emptor relinquished his claim to a two pies share in each village in favour of the defendants-vendees, and the defendants-vendees admitted the plaintiff-pre-emptor's claim with respect to the remainder of the property transferred. Upon this compromise a decree was passed.

The present suit was brought by the plaintiff upon the contention that the proceedings just described amounted to a transfer, within the meaning of the *wajib-ul-arz*, and therefore gave rise to the right of pre-emption; and alleging further that he was a nearer co-sharer in the two villages than Udit Narain Rai, and therefore entitled, under the *wajib-ul-arz*, to enforce the right against him. The defendants (the parties to the compromise and the decree) contended that the transaction referred to was not a transfer, within the meaning of the *wajib-ul-arz*, in respect of which a right of pre-emption could be enforced. The Court, of first instance (Munsif of Bansaon) decreed the claim, holding that the transfer effected by the compromise and decree in favour of Udit Narain Rai "had all the incidents and properties of a sale," and therefore gave rise to the right of pre-emption. On appeal, the Subordinate Judge of Gorakhpur, being of the contrary opinion, reversed the decree.

In second appeal, it was again contended on the plaintiff's behalf that the transfer to Udit Narain Rai, under the compromise, was a transfer of the nature contemplated by the *wajib-ul-arz*.

Munshi *Sukh Ram*, for the appellant.

Lala *Juala Prasad*, for the respondents.

PETHERAM, C. J.—I am of opinion that this appeal must be dismissed with costs. The sale, in respect of which the right of pre-emption is claimed, is a sale in which the right was claimed by another party, and was the subject of a compromise. The appellant urges that this compromise of a former suit had all the virtue of a private sale, and that, he being a nearer co-sharer, his right of pre-emption accrued in consequence. This action is, in effect, to have it established that another suit by the present defendant Udit Narain Rai was wrongly decreed. If we were to allow this, it would be reducing the right of action and proceedings for pre-emption to an absurdity. No sooner one suit was decreed for pre-emption, than another would be filed, and so it might go on from the nearest co-sharer's suit to the next and the next, down to the person whose interest in the village was the smallest and most remote. The lower appellate Court was right in dismissing the suit, and this appeal must be and is dismissed with costs.

TYRRELL, J.—I am of the same opinion.

Appeal dismissed.

1885

HANUMAN
RAI
v.
UDIT NARAIN
RAI.

