

instrument must prevail under s. 50 of the Registration Act against that of the defendant. This would be so if that instrument had not at the time of the plaintiff's suit been merged in a decree. The words "not being a decree or order" in the section in question are conclusive against the plaintiff's claim to get the declaration he sought in his suit. The appeal is dismissed with costs.

Appeal dismissed.

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

SHIB SHANKAR LAL (PLAINTIFF) v. BANARSI DAS (DEFENDANT).*

Act XII of 1881 (N.-W. P. Rent Act), s. 93 (h)—"Recorded co-sharer."

Held that a co-sharer of a mahal whose share was recorded in "shamilat" with all the other pattidars, but was not specifically defined in the *khewat* in a fractional or separate form, was a "recorded co-sharer", within the meaning of s. 93 (h) of the N.-W. P. Rent Act (XII of 1881).

On the 12th July, 1882, the arbitrators appointed to divide a mahal among several co-sharers, awarded a one-fifth share to the plaintiff in this case, Shib Shankar Lal. He contested the award in the civil Courts, but it was eventually upheld. On the 1st December, 1883, he was recorded in the *khewat* as owner of a one-fifth share of the mahal. The present suit was brought by the plaintiff under s. 93 (h) of the N.-W. P. Rent Act (XII of 1881) in respect of profits which became due on the 1st July, 1883. Both the Court of first instance (Assistant Collector of Etawah) and the lower appellate Court (officiating District Judge of Mainpuri) dismissed the claim, on the ground that the plaintiff was not a "recorded sharer" of the mahal, within the meaning of s. 93 (h) of the Rent Act, at the time when the profits sued for became due, and he was therefore not competent to maintain the suit. The plaintiff appealed to the High Court. It was contended on his behalf that, at the time of the institution of the suit, he was a recorded co-sharer, within the meaning of the section, though his share had not been specifically defined.

Munshi *Hanuman Prasad*, for the appellant.

Babu *Ratan Chand*, for the respondent.

* Second Appeal No. 1398 of 1884, from a decree of H. G. Pearse, Esq., Offg. District Judge of Mainpuri, dated the 18th June, 1884, affirming a decree of E. Gray, Esq., Assistant Collector of Etawah, dated the 10th May, 1884.

1885

SHIB
SHANKAR
LAL
v.
BANARSI
DAS.

PETHERAM, C. J., and TYRRELL, J.—The plaintiff sues in the Revenue Court for a one-fifth share in certain profits of a village, which were divisible on the 1st July, 1883. The defendant-lambardar resists the claim, on the ground that the plaintiff was not recorded as a recorded co-sharer on the 1st July, 1883. The Judge and the Assistant Collector allowed this contention, and dismissed the plaintiff's suit; but this is an erroneous view of s. 93 (h) of the Rent Act. In July, 1883, the plaintiff was a recorded co-sharer, though his share was not specifically stated. The plaintiff was recorded in "*shamilat*" with all the other pattidars.

This is an entry of a share of a co-sharer amounting to an interest within the meaning of s. 93 (h). The lower Courts have wrongly held that, because this interest was not specifically defined in a fractional or separate form the suit would not lie. The order of the lower appellate Court is reversed, and this appeal decreed, and the case remanded, under s. 562 of the Code, for a decision on the merits. The costs of this appeal to be costs in the cause.

Cause remanded.

1885

July 17.

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

AJUDHIA BAKHSI SINGH (DEFENDANT) v. ARAB ALI KHAN AND OTHERS
(PLAINTIFFS).*

Pre-emption—Right pleaded in defence to suit for possession by purchaser of co-sharer's rights and interests.

A co-sharer of a village, who is in possession, cannot plead the existence of a right of pre-emption in defence to a suit for possession by the purchaser of the rights and interests of another co-sharer.

ONE Zaman Khan died in 1878, leaving a share in a village called Pauri, and another share in a village called Madhopur. He had three sons named Murtaza Khan, Sadik Khan, and Ali Muhammad Khan. In execution of a decree, dated the 2nd September, 1879, in favour of one Muhamdi Khanam, against Murtaza Khan and Sadik Khan as heirs of Zaman Khan, the rights of the judgment-debtors in Pauri were sold; and in execution of a decree in favour of one Arab Ali Khan, their rights in Madhopur were sold. In each case the property attached was described as the

* Second Appeal No. 1278 of 1884, from a decree of F. E. Elliot, Esq., District Judge of Allahabad, dated the 1st August, 1884, affirming a decree of F. S. Bullock, Esq., Subordinate Judge of Allahabad, dated the 15th December, 1883.