1885
June 29.

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

KARAN SINGH AND ANOTHER (PLAINTIFFS) *v.* MUHAMMAD ISMAIL KHAN AND OTHERS (DEFENDANTS) *.

Pre-emption—Hindu widow—Joinder of plaintiffs, one of whom had no right to sue for pre-emption—Amendment of plaint.

The plaintiffs in 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," alleged themselves to be jointly interested in the village, and, in their plaint, claimed relief jointly. One of the two plaintiffs was the widow of a co-sharer in the village, who, at the time of his death, was a member of a joint Hindu family.

Held that, inasmuch as the widow had only a right of maintenance out of the estate of her husband, she was not a co-sharer in the village, and; therefore had no right to claim pre-emption.

Held further, with reference to the manner in which the plaint was framed, that the other plaintiff could not claim pre-emption entirely on his own account without amending the plaint, but that it was too late for him to take such a course. *Dámodar Das* v. *Gókal Chánd* (1) referred to.

THE plaintiffs in this suit were Karan Singh, the minor son of Desraj, deceased, and Musammat Lado, calling herself the widow of Balwant Singh, deceased, son of Desraj. Musammat Lado claimed in this suit, on her own behalf, and as the guardian of Karan Singh, to enforce a right of pre-emption in respect of the sale of a share in a village called Alahdadpur. The plaintiffs claimed under the *wajib-ul-arz* as "collateral co-sharers." It appeared that, on the death of her husband Balwant Singh, Musammat Lado's name was substituted for his in the revenue registers. It was denied by the vendees that Lado was the widow of Balwant Singh, and it was a point in dispute whether Balwant Singh had or had not pre-deceased his father Desraj.

The Court of first instance dismissed the suit on the ground that Lado had no right to sue, not being a "co-sharer," and Karan Singh had lost the right of pre-emption by associating with himself a person who was not a "co-sharer." The Court observed as follows :—

"In my opinion, the third point at issue is that which should be tried first. Lado's right of pre-emption cannot be admitted in any way, and she has no right whatever to the property owned by

* First Appeal No. 98 of 1884, from a decree of Maulvi Sami-ullah Khan, Subordinate Judge of Aligarh, dated the 17th March, 1884.

(1) *Ante*, p. 79.

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Desraj. It is satisfactorily proved by the evidence on the record that Balwant, who is alleged to be the husband of Lado, died in the life-time of his father Desraj, hence the Musammat had no position; and, assuming that Balwant died after his father, Musammat Lado had no proprietary right to the property in the life-time of Karan Singh, nor was she a share-holder in the village, nor could she be a collateral. As to Balwant, it is alleged by the plaintiffs that he died after Desraj; but they do not say that he divided the property. If therefore the plaintiffs' own statement were admitted in respect of Balwant, Musammat Lado had no right to ancestral property left by Desraj, nor can she be the heir of Desraj under the Hindu Law. She is like a stranger, and even if she had been a woman whose possession during her life-time could have been admitted, she could not have claimed the right of pre-emption, as is evident from the case of *Dila Kuari* v. *Jagarnath Kuari* (1). Therefore, when the Musammat is a perfect stranger and has no concern with reference to the sold property, Karan Singh too has lost any right which he may be supposed to have had, by associating her with himself. In other words, when a claim has been brought in the names of two persons, one of whom is a 'stranger,' it cannot be decreed in the shape in which it has been brought. It would be inconsistent with sound principles to dismiss the claim of Lado and to maintain the claim of Karan Singh as valid, and to adjudicate upon it. This view is supported by the ruling in the case of *Bhawani Prasad* v. *Damru* (2)."

The plaintiffs appealed to the High Court. It was contended on their behalf, *inter alia*, that the lower Court had erred in holding that Lado had no right to sue, and that Karan Singh had lost the right of pre-emption by joining her as a co-plaintiff.

Pandit *Nand Lal*, for the appellants.

Pandit *Ajudhia Nath*, for the respondents.

PETHERAM, C. J.—I think that the appeal must be dismissed. The Judge has dismissed the suit upon the ground that one of the plaintiffs is not a co-sharer in the village, and had no right to sue. The relief claimed in the plaint is a joint one, and one of the plain-

(1) Weekly Notes, 1883, p. 177. (2) I. L. R., 5 All. 197.

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tiffs cannot succeed without amending the plaint, and striking out the name of the other plaintiff. The facts upon which the judgment of the Judge is founded are as follows :—One of the plaintiffs, Musammat Lado, is the widow of one of the co-sharers of the village. Her husband at his death was a member of a joint Hindu family ; his widow, Musammat Lado, therefore, did not succeed to the estate of her husband, which was inherited by the other members of the family. She had only a right of maintenance out of the estate of her late husband; she was therefore not a co-sharer in the village, and therefore had no right to claim pre-emption. She must, for the purposes of this suit, be regarded as a stranger.

Now, in the plaint, both the plaintiffs allege themselves to be jointly interested in the village, and they jointly claimed pre-emption. One of them, Musammat Lado, is not entitled to claim pre-emption, and the other plaintiff therefore cannot claim pre-emption entirely on his own account without amending the plaint. Under a Full Bench ruling of this Court—*Damodar Das* v. *Gokal Chand* (1), the plaint cannot be amended at this time of day : with the petition of plaint as it now stands, the plaintiffs cannot succeed. The appeal is dismissed with costs.

BRODHURST, J.—I am of the same opinion.

Appeal dismissed.

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July 3.

APPELLATE CRIMINAL.

Before Mr. Justice Straight.

QUEEN-EMPRESS *v.* DAN SAHAI.

Criminal Procedure Code, s. 288—Trial before Court of Session—Evidence given before committing Magistrate used at trial to contradict witnesses.

S. 288 of the Criminal Procedure Code was never intended to be used so as to enable a Court trying a cause to take a witness's deposition bodily from the committing Magistrate's record, and to treat it as evidence before the Court itself. *Queen* v. *Amanulla* (2) referred to.

A Judge is bound to put to the witnesses whom he proposes to contradict by their statements made before the committing Magistrate, the whole or such portions of their depositions as he intends to rely upon in his decision, so as to afford them an opportunity of explaining their meaning, or denying that they had made any such statements, and so forth.

(1) *Ante*, p. 79. (2) 12 B. L. R., App. 15.