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Code. That section enacts that "where there are numerous parties having the same interest in one suit, one or more of such parties may, with the permission of the Court, sue, or be sued, or may defend in such suit, on behalf of all parties so interested." It may be quite possible that if these plaintiffs had applied to the Court under the provisions of s. 30, they would have obtained permission to institute this suit; but, not having obtained that permission, they certainly were not entitled to institute the suit; and, under the circumstances, we think that the ground of objection taken by the defendants in the second paragraph of their written statement, and which forms the subject of the second issue, was a good objection; and that this suit was properly dismissed by the District Judge." Now, with all due deference to the learned Judges who delivered that judgment, I dissent from the remarks which I have just read. I hold that it is an undoubted principle of Muhammadan Law that the persons who have the most direct interest in a mosque are the worshippers who are entitled and accustomed to use it. It is impossible to imagine whose interest in the mosque can be direct if theirs is not, and I should say, that even if this case fall under the purview of s. 539, they would have *locus standi* to maintain the suit. But, for the reasons which I have already given, I am of opinion that neither s. 30 nor s. 539 of the Civil Procedure Code applies to the present case, and that the plaintiff was competent to maintain the suit.

My answer to the reference is, therefore, in the affirmative.

OLDFIELD, BRODHURST, and DUTHOIT, JJ., concurred.

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

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GANDHARP SINGH AND ANOTHER (DEFENDANTS) *v.* SAHIB SINGH AND ANOTHER (PLAINTIFFS).*

Pre-emption—Wajib ul arz—"Co sharer"—Joint Hindu family.

The members of a joint and undivided Hindu family, other than that member who is recorded in the Collector's book as a sharer in the mahal, are "co-sharers," for the purposes of pre-emption, in the sense of the *wajib-ul-arz*.

* Second Appeal No. 1418 of 1883, from a decree of Maulvi Mahmud Bakhsh, Subordinate Judge of Mainpuri, dated the 4th August, 1883, affirming a decree of Pandit Kashi Narain, Munsif of Etawah, dated the 9th April, 1883.

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THE plaintiffs in this case, recorded in the revenue registers as co-sharers in a village, sued to enforce the right of pre-emption in respect of the sale by another co-sharer of his rights in the village. The suit was based on the *wajib-ul-arz* and village custom. That document gave "co-sharers," as against strangers, a right of pre-emption, in the case of a sale by a co-sharer of his rights in the village. The sale in question had been made to four persons, two of whom were recorded in the revenue registers as co-sharers in the village. The other two were Gandharp Singh and Bisal Singh, sons of Ishri Singh. Ishri Singh was recorded in the revenue records as a co-sharer. The share in respect of which his name was so recorded was joint Hindu family property. The main defence to the suit was that the defendants-vendees were co-sharers in the village, and that therefore the plaintiffs' suit was not maintainable.

The Court of first instance (Munsif of Etawah) held that the defendants-vendees, Gandharp Singh and Bisal Singh, were not "co-sharers" in the village within the meaning of the *wajib-ul arz*, because, although as members of a joint Hindu family, they might be interested in the share recorded in their father's name, their names were not recorded as co-sharers in the revenue registers. It further held that, although the other defendants-vendees were "co-sharers," yet the sale was invalid, in regard to them also, as they had joined in purchasing with persons who were not "co-sharers." It accordingly gave one of the plaintiffs, Aman Singh, a decree, refusing, for reasons which it is not material for the purposes of this report to state, to give the other plaintiff a decree. On appeal by the defendants-vendees the lower appellate Court (Subordinate Judge of Mainpuri) also held that Gandharp Singh and Bisal Singh were not "co-sharers." It observed as follows :—

"As to the above point I am of opinion that under the decisions in *Heera Lal* v. *Khowanee* (1) and *Bheekum Singh* v. *Gordhun Singh* (2) the son cannot be considered to be a sharer by virtue of his right of inheritance. When Gandharp Singh and Bisal Singh cannot be considered to be co-sharers in the village, they are strangers. The co-sharers in the *wajib-ul-arz* mean those persons who are entered in the *khewat*."

(1) N.-W. P. S. D. A. Rep., 1865, p. 71. (2) N.-W. P. S. D. A. Rep., 1865, p. 251.

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On second appeal by the defendants-vendees Gandharp Singh and Bisal Singh, it was contended on their behalf that they were co-sharers in the village, within the meaning of the *wajib-ul-arz*, and that the suit was therefore not maintainable as against them.

The Division Bench (STRAIGHT, Offg. C. J., and DUTHOIT, J.) hearing the appeal referred the following question to the Full Bench : —

"Are the members of a joint and undivided Hindu family, other than that member who is recorded in the Collector's book as a sharer in the mahal, co-sharers for the purposes of pre-emption in the sense of the *wajib-ul-arz*?"

Pandits *Ajudhia Nath* and *Nand Lal*, for the appellants.

Babu *Jogindro Nath Chaudhri*, for the respondents.

Pandit *Ajudhia Nath*.—The vendees Gandharp Singh and Bisal Singh are "co-sharers" in fact. Their not being recorded is immaterial, so far as the right of pre-emption is concerned. [He was stopped.]

Babu *Jogindro Nath*.—It is not denied that, according to the Mitakshara law, the son of a Hindu father is regarded as a co-sharer with his father. But with reference to the right of pre-emption, which, under the *wajib-ul-arz*, rests on contract, those only who have signed the contract, *i.e.*, whose names are recorded, can be regarded as parties to the contract, and competent to claim rights by virtue of it. [DUTHOIT, J.—You say in fact that apart from the paper, there is no right of pre-emption, and that therefore those only who have signed the paper are enjoying the right? PETHERAM, C. J.—Is not the *wajib-ul-arz* the evidence of the contract, rather than the contract itself?] Sometimes the *wajib-ul-arz* not only states the customs of those living under it, but incorporates contracts made by them. These contracts are sometimes introductory of new rights : thus the right of pre-emption may be created by adding a clause to the *wajib-ul-arz*. The law of pre-emption is not part of the personal law of the Hindus. It acquires force only among those Hindus who have adopted it as a matter of custom or else as a matter of contract. In no third way can it exist among Hindus. [PETHERAM, C. J.—If these defendants were parties to the contract, then they would no doubt be entitled to

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claim pre-emption under it. You say that there is no evidence of a contract for those who have not signed the paper. But they affirm that they are parties to the contract.] They claim as the sons of a person who have signed, and as having an equal right with their father. [PETHERAM, C. J.—All that they claim is to live under the law of the village. MAHMOOD, J.—The manager of a Hindu joint family has power to bind all the members by his contracts, and therefore the signature of the father would be binding on the sons.] Assuming that to be the case, then if the father should omit to assert the right, his omission also should be binding on the sons, and should prevent any assertion of the right by them. I do not deny that these defendants are co-sharers, but only that they should not be regarded as such for purposes of pre-emption, because they are not parties to the *wajib-ul-arz*. I rely on the following authorities:—*Mahadeo Singh* v. *Nanda Singh* (1), *Heera Lal* v. *Khowanee* (2), *Bheekum Singh* v. *Gordhun Singh* (3).

PETHERAM, C. J.—The question before us is whether, assuming that the sons in a joint Hindu family are to be regarded as co-sharers, they are not to be regarded as recorded co-sharers. To me it seems that the question answers itself. It is virtually asking whether many equal co-sharers are to be considered as having equal rights, and I shall hold that they have, until the contrary is shown. To say that the defendants are precluded from exercising their rights appears to me to be idle and contrary to justice; and I have no hesitation in holding that all the co-sharers, whether signatories of the *wajib-ul-arz* or not, have equal rights, both in respect of pre-emption and in other respects.

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

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

MAHMOOD, J.—I also concur, but I only wish to observe that I have seen cases in which it is said in the *wajib-ul-arz* that the recorded share-holders shall be entitled to claim the right of pre-emption. If that had been the case here, I might perhaps have been disposed to hold that co-sharers whose names were not recorded in the revenue papers were debarred from exercising the right;

(1) Weekly Notes, 1884, p. 100. (2) N.-W. P. S. D. A. Rep., 1865, p. 71.
(3) N.-W. P. S. D. A. Rep., 1865, p. 251.

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but in the *wajib-ul-arz* now in question no such expression occurs, and therefore the answer which the learned Chief Justice has given fully applies to the case.

DUTHOIT, J.—I have no hesitation in answering the question in the affirmative.

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

SHEODISHT NARAIN SINGH AND ANOTHER (DEFENDANTS) *v.* RAMESHAR DIAL AND ANOTHER (PLAINTIFFS). *

Jurisdiction—Civil and Revenue Courts—Landlo der and tenant—Declaratory decree—Act XII of 1881 *(N.-W. P. Rent Act), s.* 95 *(a).*

A suit in which the plaintiff claims, as the tenant of land, that he may be declared to be the tenant, and that the defendant, the landholder, may be restrained from interfering with his right to the land as a tenant, and in which the defendant denies the relation between him and the plaintiff of landholder and tenant, is not a suit which is exclusively cognizable in the Revenue Court.

THE plaintiffs in this case alleged that they held 107 bighas 16 biswas of cultivatory land at a rent of Rs. 147-8-0, and 1 bigha of grove-land at a rent of 12 annas, and 1 bigha 5 biswas of rent-free land, as their ancestral property; that they used plot No. 254, consisting of 11 biswas, which was a portion of their rent-paying land, and plot No. 253, consisting of 1 bigha 5 biswas rent-free land, as a threshing floor and for stacking corn; that the defendants, who were the zamindars, denied their right to the two plots mentioned, and interfered with their possession by various acts stated in the plaint; and they asked for a decree declaring their right to the land, and that the grain which the defendants had stored on the land might be removed, and the defendants might be restrained from interfering with their right to the land. The defendants' answer to the suit was that the plots did not belong to the plaintiffs, either as part of their rent-paying holding or rent-free holding, but were waste land belonging to them and in their possession.

The Court of first instance dismissed the suit. The lower appellate Court gave the plaintiffs a decree as claimed.

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* Second Appeal No. 21 of 1884, from a decree of H. S. Gardner, Esq., District Judge of Benares, dated the 23rd August, 1883, reversing a decree of Shah Ahmad-ullah, Munsif of Benares, dated the 5th June, 1883.