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cannot therefore be amended by her. The appeal fails and is dismissed with costs in all Courts, which will be borne throughout by Lachmi Narain, the person who signed and verified the plaint on the record.

Appeal dismissed.

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

ABDUL HAI AND OTHERS (DEPENDANTS) v. NAIN SINGH AND ANOTHER
(PLAINTIFFS)*

Pre-emption—Wajib-ul-arz—Partition without new wajib-ul-arz being framed—Act No. XIX of 1873 (North-Western Provinces Land Revenue Act) section 107.

When a mahal is divided by perfect partition into two or more separate mahals a separate record of rights should be framed for each of the new mahals.

Where under such circumstances no fresh records of rights are framed for the new mahals the co-sharers in any one of the new mahals cannot, unless under very exceptional circumstances, claim, under the terms of the old record of rights applicable to the original undivided mahal, pre-emption in respect of land situated in any of the other new mahals. *Ghure v. Man Singh* (1) referred to.

THIS was a suit for pre-emption of a share in a village. The village in which the property in suit was situated had originally consisted of one mahál, but prior to the sale which gave rise to the present suit had been divided by perfect partition into two separate maháls. On this partition, however, no new *wajib-ul-arzes* had been framed for the new maháls. The plaintiffs pre-emptors were owners of shares in one of the new maháls and the share sold was a share in the other new mahál. The existing *wajib-ul-arz*, framed when the village was undivided, stated that the custom of pre-emption prevailed in the village.

The Court of first instance (Subordinate Judge of Moradabad) dismissed the suit, holding that the plaintiffs, not being sharers in the mahál in which the share sold was situated, could not claim pre-emption by virtue of the old *wajib-ul-arz*. The Court followed the ruling of the High Court in *Ghure v. Man Singh* (1).

* First Appeal from Order No. 35 of 1897, from an order of H. W. Lyle, Esq., Additional Judge of Moradabad, dated the 20th April 1897.

The plaintiffs appealed. The lower appellate Court (District Judge of Moradabad), relying on certain rulings of the High Court, *viz.*, *Gokal Singh v. Mannu Lal* (1), *Kuar Dat Prasad v. Nahar Singh* (2), *Shiam Sundar v. Amanant Begam* (3), and *Abbas Ali v. Ghulam Nabi* (4), allowed the appeal and made an order of remand under section 562 of the Code of Civil Procedure. From this order of remand the defendants appealed to the High Court.

Mr. *Amir-ud-din* for the appellants.

Munshi *Gobind Prasad* for the respondents.

EDGE, C. J. and BLAIR J:—This was a suit for pre-emption. The share sold was in a mahal which had formed a part of a larger mahal. The co-sharers in the larger mahal had obtained a perfect partition under Act No. XIX of 1873. The plaintiff in this case is a co-sharer in the other mahal, in which the share sold is not, which formed part of the larger area. It appears that no separate *wajib-ul-arz* was prepared at the date of partition. The plaintiffs' contention is that the old *wajib-ul-arz* still applies, and that, inasmuch as he is a share-holder within the area to which that *wajib-ul-arz* applied, he is entitled to pre-emption, although he is not a share-holder in the particular mahal in which the share is which was sold. The rulings on this point are somewhat conflicting; but in one of the last rulings of this Court on this subject it was said:—"The result then is that the document upon which the respondents base their right, and which was the only evidence which they produced in support of that right, is a document prepared at a time when circumstances wholly different from those now in existence prevailed and which never contemplated the existing state of things." We have quoted from the judgment by Mr. Justice Knox in *Ghure v. Man Singh*, (5). We believe that the decision in that case is in harmony with the view now entertained in this Court. The object with which share-holders in a mahal seek for partition is to sever their connection as co-sharers

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(1) I. L. R., 7 All., 772.

(3) I. L. R., 9 All., 235.

(2) I. L. R., 11 All., 257.

(4) Weekly Notes, 1891, 187.

(5) I. L. R., 17 All., 226, at p. 234.

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with other share-holders of the mahal. Some desire to separate their interest from other co-sharers because the latter do not pay their quota of the Government revenue regularly, thereby bringing liability for their arrears upon all the co-sharers of the mahal. Sometimes, no doubt, partition is sought because co-sharers cannot get on comfortably with each other as co-sharers in the same mahal. In any view of the subject it would require very strong evidence to satisfy us that after share-holders in a mahal have applied for and obtained partition and consequent separation of their interest from other share-holders in the mahal they intended that the other co-sharers from whom they had separated their interest should be entitled to come in and pre-empt in the new mahal and become again their co-sharers. It is obvious to our minds that, on a true construction of Act No. XIX of 1873, it is the duty of the Collector or Assistant Collector on making a perfect partition to frame a separate record of rights for each of the new mahals. Unfortunately it is not always done, and hence these endless disputes between the share-holders in different mahals which formed parts of one original mahal. If Collectors or Assistant Collectors would read section 107 of Act No. XIX of 1873 with the definition of "Mahal" as given in section 3 of that Act, they would see that apparently it is the intention of the Legislature that each mahal should have a separate record of rights. A decision of two Judges of this Court in *Angan Fateh Chand v. Bibi Hamid-un-nissa*, Second Appeal No. 1249 of 1892, in which an order of remand was made on the 19th March, 1894, and which was decided on the 18th February, 1895, supports the opinion which we have expressed. We allow this appeal, and set aside the order of the Court below, and dismiss the appeal to that Court with costs, and restore and affirm the decree of the first Court. The appellant will have the costs of this appeal.

Appeal decreed.