## APPELLATE CIVIL.

1901
*March* 1.

*Before Mr. Justice Burkitt.*

NARAIN SINGH AND ANOTHER (DEFENDANTS) *v.* PARBAT SINGH (PLAINTIFF).*

*Pre-emption—Wajib ul-arz—Sale to a stranger—Resale to a co-sharer having a right of pre-emption, but subsequently to a suit brought by another such co-sharer.*

Where property, which is subject to a right of pre-emption declared by the *wajib-ul-arz*, is sold to a stranger, such stranger may defeat the claim of a co-sharer having a right of pre-emption by sale to a co-sharer having a similar right; but in order that the re-sale may have such effect, it must be completed before any suit for pre-emption is brought by a co-sharer entitled to pre-empt. *Serhmal* v. *Hukam Singh* (1) distinguished. *Janki Prasad* v. *Ishar Das* (2) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. *E. A. Howard*, for the appellants.

Pandit *Sundar Lal* and Munshi *Gulzari Lal* (for whom Babu *Satya Chandra Mukerji*) for the respondents.

BURKITT, J.—This is an appeal in a pre-emption suit. One Lachman Prasad sold certain property to Chheda Lal. Chheda Lal is a stranger to the village community. Parbat Singh, the respondent here, who, under the *wajib-ul-arz*, was entitled to pre-empt, instituted a suit for pre-emption against the vendee and vendor. After that suit was instituted, and after the summons had been served on the stranger defendant-vendee, the latter transferred the property, the subject of the pre-emption suit, to the defendants-appellants Narain Singh and Randhir Singh. Both the lower Courts have given decrees for possession to the plaintiff pre-emptor on payment of the purchase-money, and have rejected the pleas of the new defendants-vendees Narain and Randhir. As to those defendants, it is admitted that in the matter of pre-emption they stand on the same level as the plaintiff pre-emptor Parbat Singh.

It has been contended in this appeal by the learned counsel for the appellants that as the new vendees Narain and Randhir

* Second Appeal No. 851 of 1900 from a decree of Maulvi Maula Bakhsh, Additional Subordinate Judge of Aligarh, dated the 19th June, 1900, confirming a decree of Maulvi Muhammad Azimuddin, Munsif of Kasganj, dated the 19th September 1899.

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were persons who, as regards pre-emption, stood on the same level as the plaintiff Parbat Singh, their purchase had the effect of destroying the right of suit which the pre-emptor had acquired by the original sale to a stranger. At first sight the case of *Serhmal* v. *Hukam Singh* (1) seems to favour the contention of the appellants. In that case it was held that if property which had been sold to a stranger is subsequently conveyed to a person entitled under the *wajib-ul-arz* to take such property, the pre-emptive right which had accrued to the pre-emptor ceases to be operative. But, when the case is looked into closely, it is clear the case has not the broad meaning contended for. It seems to me that the words at page 102 "until a suit has been brought by a co-sharer for pre-emption of property sold to a stranger" are in this matter the governing words of the judgment. Their meaning appears to me to be that when a stranger has wrongly purchased property from a co-sharer contrary to the provisions of the *wajb-ul-arz*, there remains to him a *locus pœnitentiæ* by transferring that property to a co-sharer, but this must be done before a suit is brought by a co-sharer entitled to pre-empt. That seems to me to be the great difference between the two cases. In the case just cited the resale to a co-sharer, entitled to pre-empt, took place before any pre-emption suit was instituted. In the present case, however, such a suit had been instituted, and it was apparently to avoid the consequences of that suit that the stranger-vendee, on whom a summons to appear and defend the suit had been served, transferred the pre-empted share to a person entitled to purchase under the *wajib-ul-arz*. There can be no doubt that at the time when this suit was instituted there was in the plaintiff pre-emptor a subsisting cause of action, and I fail to see how a cause of action, which existed on the date the suit was instituted, can be vitiated or destroyed by any subsequent action taken by a defendant to that suit during the pendency of the proceedings under it. On this matter the judgment of this Court in the case of *Janki Prasad* v. *Isha Das* (2) is relevant. In my opinion the lower appellate Court decided the case properly. The appeal is dismissed with costs.

*Appeal dismissed.*

(1) (1897) I. L. R., 20 All., 100. (2) Weekly Notes, 1899, p. 126.