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August 2.

Before Mr. Justice Burkitt and Mr. Justice Henderson.

CHATAR SINGH (DEFENDANT) v. KALYAN SINGH (PLAINTIFF).*

Pre-emption—Wajib-ul arz—Interpretation of document—Meaning of the term "*ek jaddi*."

Held that the term "*ek jaddi*" used in the pre-emption clause of a *wajib-ul-arz* signifies persons descended from a common ancestor through the male line. *Guneshree Lal v. Zarat Ali* (1) referred to.

IN this case the plaintiff and the defendant were rival claimants for pre-emption in respect of a sale made by Sewa Ram and Mewa Ram to Ganga Bakhsh, son of Chhatar Singh. The plaintiff relied on the provisions of the *wajib-ul-arz*, which gave a preferential right of pre-emption to co-sharers who were *ek jaddi* with the vendor. The plaintiff and the vendors were both admittedly descended from the same common ancestor, but while the plaintiff's descent was in the direct male line, the vendors were the sons of the great-granddaughter of that ancestor.

The Court of first instance decreed the plaintiff's claim for half only of the property in suit. The lower appellate Court decreed the claim in full, holding that the expression "*ek jaddi*" included descent from a common ancestor by either side. From this decree the defendant Chhatar Singh appealed to the High Court.

Babu Jogindro Nath Chaudhri and Babu Satish Chandra Banerji for the appellant.

Mr. D. N. Banerji and Pandi Moti Lal for the respondent.

BURKITT, J.—There is only one short point to be decided in this case, and that is whether the plaintiff Kalyan Singh can be considered to be *ek jaddi* with the vendors Mewa Ram and Sewa Ram?

As I understand the term *ek jaddi* when used in a *wajib-ul-arz* in these Provinces, it means persons descended from a common ancestor through the male line. If that be the case, it is clear that Kalyan Singh and the vendors are not *ek jaddi*, for although they are all descended from one Lal Singh, Sewa Ram and Mewa Ram are the sons of a great-granddaughter of Lal

* Second Appeal No. 288 of 1898 from a decree of L. G. Evans, Esq., District Judge of Aligarh, dated the 10th February 1898, modifying a decree of Maulvi Ahmad Ali Khan, Additional Subordinate Judge of Koil, dated the 21st May 1897.

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Singh, so that they cannot claim an unbroken male descent from Lal Singh. This question was before a Division Bench of this Court in the year 1893, in an unreported case—F. A. F. O. No. 80 of 1892. In that case, which is on all fours with the present one, it had been held by the Court of first instance that the plaintiff was *ek jaddi* with the vendor, and that the “*jadd*” of the plaintiff therein was to be sought in his own father’s stock and not his mother’s. That decision was reversed in appeal by the lower appellate Court. That Court held that the plaintiff’s *jadd* was not necessarily confined to his father’s stock, and therefore he was *ek jaddi* with the vendors. On second appeal to this Court, it was held that that view was erroneous. The decision of the lower appellate Court was reversed, and that of the Court of first instance was restored. That decision is binding on me, and I cannot say that I at all disagree with it. I have always understood that in all cases such as this “*ek jaddi*” implied descent through males.

I would therefore allow this appeal and modify the decree of the lower appellate Court, and restore that of the Court of first instance. I would direct that each of the pre-emptors take half of the property, each of them paying Rs. 2,500.

The appellant will have his costs.

HENDERSON, J.—In this case it is admitted that if the question had been a question of succession between Kalyan, Mewa Ram and Sewa Ram, Kalyan could not be said to be *ek jaddi* with the vendors. I am not prepared to dissent from the unreported decision which has been just referred to, though I have some doubt as to its correctness. It seems to me that the object of the provisions in the *wajib-ul-arz* giving preferential rights to co-sharers who are *ek jaddi* with the vendors was to keep the property in the family, and therefore to give to co-sharers who were related by descent from a common ancestor a preferential right of pre-emption. There can be no doubt that Sewa Ram and Mewa Ram through their mother are related to Kalyan. In Shakespear’s Dictionary the word “*ek jaddi*” is said to mean “descendants from the same ancestor,” and in the case of *Guneshree Lal v. Zaraut Ali* (1) the words “*ek jaddi*” were interpreted to mean

(1) N. W. P., H. C. Rep., 1870, p. 343.

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"related by descent from a common ancestor." Having regard to these considerations, I have, as I have said, some doubt as to the correctness of the unreported decision, but I do not feel myself justified in dissenting from that case and from the judgment which has just been delivered, and I therefore, though with some hesitation, agree with the order which has just been passed.

Decree modified.

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August 3.

Before Mr. Justice Aikman.

DURGA (DEFENDANT) v. BHAGWAN DAS AND ANOTHER (PLAINTIFFS).^{*}
Civil Procedure Code, section 317—Execution of decree—Sale in execution—Suit against certified purchaser for recovery of part of the property purchased.

Kishan Lal and Tokha Mal were joint mortgagees. After their death Durga, the adopted son of Kishan Lal, and Todar, the son of Tokha Mal, brought a suit upon the mortgage, and obtained a decree for sale. After this decree had been obtained it was settled, by a suit ending in a consent decree, that one Musammam Pano was entitled along with Durga to a certain portion of the property of Kishan Lal. Kishan Lal and Todar brought their ~~decree~~ into execution, and caused the mortgaged property to be sold, and purchased it themselves. Thereupon the representatives of Musammam Pano sued Durga to recover that portion of the property which they alleged ought to have come to Pano.

Held that the suit would not lie, as being in contravention of section 317 of the Code of Civil Procedure.

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

Babu Sital Prasad Ghose, for the appellant.

Pandit Tej Bahadur Sapru, for the respondents.

AIKMAN, J.—It appears that two brothers Kishan Lal and Tokha Mal held a mortgage over a certain property. After the death of the mortgagees, Durga, the adopted son of Kishan, who is appellant here, and Todar, the son of Tokha Mal, brought a suit upon the mortgage, and got a decree on the 25th of April, 1884. Some dispute had arisen on Kishan Lal's death as to the title of Durga to his property, and a suit was brought by Kishan

^{*} Second Appeal No. 841 of 1899, from a decree of Munshi Shiva Sahai, Additional Subordinate Judge of Meerut, dated the 25th August, 1899, confirming a decree of Maulvi Muhammad Abbas Ali, Additional Munsif of Meerut, dated the 16th June, 1899.