

Before Mr. Justice Aikman.

MUNNA KHAN (PLAINTIFF) v. CHHEDA SINGH AND OTHERS

(DEFENDANTS).\*

1906  
May 21.

*Pre-emption — Muhammadan law — Talab-i-mawasibat — Power of general attorney to make first demand — Pleadings — Practice.*

Where the plaintiff in a pre-emption suit alleged that the first demand or *talab-i-mawasibat* was made for him by his general attorney and the defendant did not deny that the person in question was the general attorney of the plaintiff, but in fact no *mukhtarname* or copy of it was filed, the original being filed in another appeal then pending before the lower Appellate Court.

Held that, looking to the pleadings, the lower Appellate Court, if it had any doubt on the point, should either have examined the other record or at least have given the plaintiff an opportunity of filing the *mukhtarname* or a copy.

Held further that the first demand or *talab-i-mawasibat* can be made by a general attorney. *Abadi Begam v. Inam Begam* (1) and *Hari Har Dat v. Sreeo Prasad* (2) followed. *Musammal Ojheoonissa Begam v. Sheikh Rustam Ali* (3) referred to.

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

Mr. *Abdul Raouf*, for the appellant.

Dr. *Satish Chandra Banerji* and *Babu Satya Chandra Mukherji*, for the respondents.

AIKMAN, J.—This is an appeal by a plaintiff, who brought a suit for pre-emption. According to the plaint the immediate demand required by the Muhammadan Law was made by the plaintiff's general attorney, who, it appears from the record, is the plaintiff's brother looking after his property during the plaintiff's absence at Lucknow. In their written statements, the defendants did not deny that the person who is said to have made the immediate demand was the plaintiff's general attorney, but they alleged that the general attorney had no power or authority according to law to perform the required preliminaries. The Court of first instance overruled this plea and decreed the claim. The defendants appealed. In their grounds of appeal they took a plea that it was not proved by

\* Second Appeal No. 897 of 1904, from a decree of Maulvi Muhammad Shaif, Additional Subordinate Judge of Moradabad, dated the 11th of July 1904, reversing a decree of Pandit Mohan Lal, Muhsif of Haveli, Moradabad, dated the 18th of December, 1903.

(1) (1877) I. L. R., 1 All., 521.

(2) (1884) I. L. R., 7 All., 41.

(3) W. R., 1864, p. 219.

1906

MUNNA  
KHAN  
v.  
CHHEDA  
SINGH.

the evidence on the record that the plaintiff's agent was competent to perform on behalf of the plaintiff the legal requirements of pre-emption. The learned Additional Subordinate Judge held that, although the second demand or invocation in the presence of witnesses may under certain circumstances be made through an agent, the first demand or *talab-i-marwasibat* must be performed by the claimant personally. The learned Additional Subordinate Judge went on to say that no *mukhtarnama* or copy thereof in favour of the person who made the immediate demand had been filed. It was urged before the Additional Subordinate Judge that the *mukhtarnama* was filed in another case pending before him in appeal, but he declined to refer to that record. Looking to the pleadings, I think the learned Additional Subordinate Judge, if he had any doubt on the point, should either have examined that record or at least should have given the plaintiff an opportunity of putting in the *mukhtarnama* or a copy thereof. The appeal was decreed and the plaintiff's suit dismissed by the Court below. The plaintiff comes here in second appeal. The view taken by the Court below to the effect that an agent cannot perform the immediate demand, but that it must be performed by the pre-emptor personally is opposed to the rulings of this Court. The case of *Abadi Begam v. Inam Begam* (1) was a suit for pre-emption under the Muhammadan Law. In that case the immediate demand was made by the plaintiff's husband. The learned Judges (Spankie and Oldfield, JJ.) say:—"Nothing was shown to us to support the plea that a claim so made was invalid. On the contrary, it appears to us that an agent or manager, as in this case the husband for his wife, may legally assert a pre-emptive claim." In the case of *Hari Har Dat v. Sheo Prasad* (2) the learned Judges (Straight, Officiating C. J. and Mahmood, J., observe:—"It is a general rule of pre-emption that any action on the part of a duly authorized agent or manager of the pre-emptor has the same effect on pre-emption as if each act had been made by the pre-emptor himself." The case given on page 181 of *MacNaughten's Principles and Precedents of Muhammadan Law*, 4th Edition, is also directly opposed to the view taken by

(1) (1877) I. L. R., 1 All., 521.

(2) (1884) I. L. R., 7 All., 41.

the lower Appellate Court. The learned vakil for the respondents relies on the case of *Musammatt Ojheconissa Begam v. Shaikh Rustam Ali* (1). The Judges there, no doubt, make the following observations:—"Acts done by an agent are recognised in law as the acts of the principal, and we see no reason why the same maxim should not apply in a case of pre-emption to those ceremonies which in their nature are capable of being performed by an agent. What he (the pre-emptor) could not do by agent, *viz.* declare his determination to become the purchaser as soon as the news of the sale reached him, he did in person." It is clear therefore that the remark relied on was *obiter*.

I do not deny that a good deal might be said in favour of the view expressed by the lower Appellate Court; but the authorities of this Court cited above are binding on me. Following those authorities, I am bound to hold that the decision of the lower Court on the question cannot be sustained. I allow the appeal, and setting aside the decree of the lower Appellate Court, I remand the case to that Court under the provisions of section 562 of the Code of Civil Procedure with directions to readmit this appeal under its original number in the register and dispose of the remaining pleas raised in appeal to it. The appellant will have his costs in this appeal in any event. Other costs will abide the result.

*Appeal decreed and cause remanded.*

*Before Mr. Justice Aikman.*

GENDA KUNWAR (DEFENDANT) v. PIARI LAL (PLAINTIFF).  
*Act (Local) No. III of 1901 (United Provinces Land Revenue Act), section 234—Lambardar and co-sharer—Remuneration of lambardar—Rules of the Board of Revenue dated 24th February, 1902, Nos. 22 and 23.*

*Held* that, in the absence of any agreement between the lambardar and co-sharers as to the lambardar's remuneration, the lambardar is entitled to 5 per cent. under Rule 23 of the Board of Revenue Rules, dated February 24th, 1902, and is entitled to the benefit of this rule, although in previous years he may have received nothing.

\* Second Appeal No. 983 of 1903, from a decree of Kunwar Bharat Singh, District Judge of Banda, dated the 19th of July, 1904, modifying a decree of Munshi Durga Prasad, Assistant Collector of Banda, dated the 8th of January, 1904.

(1) W. B., 1864, p. 219.

1906

MUNNA  
KIAN  
v.  
CHHEDA  
SINGH.

1906  
May 23.