1906

AMANAT-ULLAH KHAN v. SARDHA PRASAD.

in the sale-deed and the decree passed on it, and as such was entitled to apply for execution of the decree. If the judgment in that case can be held to be a decision to the effect that an assignee of a decree whose application under section 232 the Court which passed the decree has seen fit to reject, can, notwithstanding such order, bring a suit for a declaration of his right to execute the decree, then I think the propriety of that decision is open to doubt.

BY THE COURT.—The order of the Court is that this appeal is dismissed with costs.

Appeal dismissed.

1906
April 11.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir George Knox.

SARDAR SINGH AND ANOTHER (DEFENDANTS) *v.* IJAZ HUSAIN KHAN AND OTHERS (PLAINTIFFS).*

Pre-emption—Wajib-ul-arz—*Construction of document*—*Retention of same* wajib-ul-arz *after division of village into mahals*—Hissadaran deh *and* hissadaran patti *on the same footing.*

Where a village was divided into three mahals and the new *wajib-ul-arz* which was prepared for one of them, A. M., was copied verbatim from the *wajib-ul-arz* of the village before division and clearly put *hissadaran deh* and *hissadaran patti* on the same footing, *held* that a co-sharer in the mahal A. M., had no right of pre-emption in regard to property sold in A. M. as against a co-sharer who, though he had no share in the mahal A. M., was a co-sharer in one of the other mahals. *Dalganjan Singh* v. *Kalka Singh* (1), referred to.

IN this case a village was divided into three mahals and the *wajib-ul-arz* for one of them, mahal Ali Mazhar, was copied verbatim from the *wajib-ul-arz* of the original village. Sardar Singh (appellant here) purchased some property in mahal Ali Mazhar. The present respondents sued to enforce a right of pre-emption. Sardar Singh was not a co-sharer in the new mahal, but was a co-sharer in one of the other mahals and relied on the fact that the *wajib-ul-arz* of the Mahal Ali Mazhar put "*hissadaran deh*" and "*hissadaran patti*" on the same footing.

---

* First Appeal No. 84 of 1904, from a decree of Pandit Raj Nath Sahib, Subordinate Judge of Allahabad, dated the 22nd of February, 1904.

(1) (1900) I. L. R., 23 All., 1 F. B.

1906

SARDAR SINGH v. IJAZ HUSAIN KHAN.

The plaintiffs contended that "*deh*" must be taken to mean "mahal."

The first Court (Subordinate Judge of Allahabad) decreed the plaintiffs' claim.

The Hon'ble Pandit *Sundar Lal*, for appellants.

Babu *Jogindro Nath Chaudhri*, Pandit *Moti Lal*, Pandit *Mohan Lal Nehru*, Babu *Satya Chander Mukerji* and Qazi *Muhammad Zahur*, for respondents.

STANLEY, C.J. and KNOX, J.—The respondents to this first appeal were plaintiffs in the Court below. They sued to enforce a right of pre-emption in respect of a sale of property situate in mauza Bidaon, mahal Ali Mazhar, sold by defendant No. 2 to Sardar Singh and Bhagwat Singh, appellants, and certain others with whom we are not concerned in this appeal. Their contention was that at the time when the sale was concluded the present appellants were strangers and that the *wajib-ul-arz* which was recorded at the last settlement in respect of mahal Ali Mazhar provides that if a sharer desires to transfer his share by sale or mortgage, he shall transfer it to co-sharers descended from one and the same stock, and after them to other co-sharers in the patti and village *(deh)* and in the event of refusal by them then to a stranger. In former times, so it is admitted, the village of Bidaon was an undivided village. In 1293 Fasli partition was demanded by the co-sharers and the whole village was divided into three separate mahals, *viz.* mahal Ali Mazhar and two other distinct mahals. The *wajib-ul-arz* prepared for the mahal Ali Mazhar was copied verbatim from the *wajib-ul-arz* which was prepared in 1870, when the village Bidaon was still a whole and undivided village. The appellants are not co-sharers in mahal Ali Mazhar, but they are co-sharers in one of the other two mahals above mentioned. The Subordinate Judge held that the appellants were strangers and in consequence of so holding decreed the plaintiffs' suit with respect to the shares purchased by the appellants. In appeal before us the appellants maintained that they come within the term *hissadaran deh* contained in the *wajib-ul-arz* and that they are, therefore, upon an equal footing as regards the right of pre-emption with the plaintiffs. The language used in the *wajib-ul-arz* is

1906

SARDAR SINGH v. IJAZ HUSAIN KHAN.

undoubtedly unusual. It is not often that we find *hissadaran patti* and *hissadaran deh* placed on the same level as regards the right of pre-emption. Usually the *hissadaran patti* takes precedence over the *hissadaran deh*. There is, however, nothing ambiguous in the language used and we must construe that language as it stands. For the respondents it is contended that the term "*deh*" must be understood to be synonymous with "mahal." Each mahal, as is urged, is a ring fence, and the intention of those who drew up the *wajib-ul-arz* must have been that the word "*deh*" must be held to connote the same idea as the word "mahal." In support of this reference is made to an unreported case of this Court in Second Appeal No. 1198 of 1901, decided on the 29th of January, 1904. In this it was held that where a village had been made the subject of partition and divided into two mahals and the *wajib-ul-arz* prepared for each mahal proposed to maintain and keep up the custom of pre-emption as set forth in the settlement *wajib-ul-arz* applicable to the whole village, it must be understood that persons in each of the two mahals had ceased to be sharers in an unbroken village and had not become and never were co-sharers in the mahals created by partition. The learned Judges who decided that case based their judgment upon the Full Bench case of this Court. *Dalganjan Singh* v. *Kalka Singh* (1). Now in that Full Bench decision it was pointed out by the learned Chief Justice, the late Sir Arthur Strachey, concurred in by the majority of the Full Bench and nowise expressly dissented from, that while it depends in every case on the particular circumstances and especially on the terms of a particular *wajib-ul-arz* whether or how far pre-emption can be claimed under it after perfect partition, there is a strong presumption against such a claim when made by persons who are no longer co-sharers of the vendors. In that case the *hissadaran deh* were not placed on the same level with the *hissadaran patti* as they are in the present case. We have no right in this particular *wajib-ul-arz* to assume that the word "*deh*" was used synonymously with "*patti*." There is nothing to show that the co-sharers of mahal Ali Mazhar wish to hold at arm's length any co-sharer in any of the mahals of which

(1) (1900) I. L. R. 22 All., 1.

the whole *deh* was comprised. We find that Sardar Singh and Bhagwat Singh came within the terms of *hissadaran deh* as used in the *wajib-ul-arz* and they were on equal footing so far as the right of pre-emption is concerned with the plaintiffs. We therefore decree this appeal and set aside the decree of the lower Court. The suit of the plaintiff will stand dismissed with costs.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

1906 *April* 12.

B. E. O'CONOR (DEFENDANT) v. GHULAM HAIDAR (PLAINTIFF) AND MUSAMMAT SUMATI AND OTHERS (DEFENDANTS).*

Pre-emption—One total price for ten villages—Ten separate conveyances naming a separate price for each village—Annual profits—Government revenue—Amount to be paid on pre-emption.

Where A agreed to buy from B ten villages for one total price, but by subsequent agreement between A and B ten separate conveyances were executed showing ten separate prices, *held* in a suit for pre-emption that if it was proved that the consideration mentioned in the sale-deed had been paid and received, the Court should not look further and ascertain the value of the property in suit by a consideration of the annual profits or of the amount of Government revenue.

THE following are the facts:—

Ten villages were purchased in execution by the decree-holder for Rs. 29,280. The decree-holder accepted an offer by the appellant to purchase the whole ten villages for Rs. 35,000. In accordance with an agreement subsequently arrived at between the parties to the sale, a separate conveyance was executed in respect of each village showing the consideration for each, that executed for the village now in suit showing the price as Rs. 5,500, and the vendor admitted at the registration receipt of this sum. She had purchased it for Rs. 4,000.

The present plaintiff, admittedly a person entitled to pre-empt, sought in this case to do so on payment of Rs. 1,996-2-3, fixing that sum on the basis of the profits of the village and alleging that Rs. 35,000 had been the price for the ten villages and that separate conveyances naming separate prices had been executed only to defeat rights of pre-emption.

* Second Appeal No. 1194 of 1904, from a decree of E. H. Ashworth, Esq., District Judge of Allahabad, dated the 6th of July, 1904, modifying a decree of Pandit Raj Nath Sahib, Subordinate Judge of Allahabad, dated the 31st of March, 1904.