1905

ZAHUR ALI v. SHER ALI.

"order" passed in an appellate proceeding under the new Rent Act, we have no jurisdiction to entertain these appeals. We have no inherent appellate jurisdiction in rent suits outside the power given us by the Statute. Therefore, whether the orders under appeal were passed under section 562 or not, and whether those orders be right or not, as to which we do not desire to express any opinion, we must dismiss both appeals. We order accordingly. We make no order as to costs.

[*Cf. Vilayat Husen* v. *Maharaja Mahendra Chandra Nandi*, (1).]

Appeal dismissed.

1905
November 15.

Before Mr. Justice Banerji and Mr. Justice Richards.

JANKI AND OTHERS (DEFENDANTS) *v.* RAM PARTAP SINGH (PLAINTIFF).*

Pre-emption—Wajib-ul-arz—Construction of document—Partition of village into separate mahals.

In a village which consisted of two pattis or mahals the wajib-ul-arz recorded a custom of pre-emption to the effect that in the case of a sale or mortgage by a shareholder a claim for pre-emption might be brought by (1) own brothers and nephews, (2) cousins who are co-sharers, (3) co-sharers in the patti, and (4) shareholders in the village (*hissadaran deh*). The village was subsequently divided into more mahals; but no new wajib-ul-arz was framed. *Held* that a co-sharer in the village had a right of pre-emption as against a stranger, even though he did not own a share in the mahal in which the property sold was situate. *Dalganjan Singh* v. *Kalka Singh* (2) referred to.

THIS appeal arose out of a suit for the recovery of possession of certain zamindari property by right of pre-emption. The suit was based upon the terms of a wajib-ul-arz of 1873, which recorded a custom of pre-emption as obtaining in the village in favour of four classes of persons, one comprising shareholders in the village (*hissadaran deh*). The plaintiff was a shareholder in the village, but not in the mahals in which the property sold was situate except for a small share in one of them. The defendants vendees were strangers. It appears that prior to 1873 the village had been separated into two pattis or mahals,

* Second Appeal No. 1106 of 1903, from a decree of Maulvi Muhammad Hashmat-ullah, District Judge of Mainpuri, dated the 22nd of June, 1903, modifying a decree of Pandit Raj Nath Sahib, Subordinate Judge of Mainpuri, dated the 14th of May, 1902.

(1) *Supra*, p. 88. (2) (1899) I. L. R., 22 All., 1.

by perfect partition, as was found by the lower appellate Court on an issue being remitted to it by the High Court. Subsequently to 1873 a further sub-division took place, but no fresh wajib-ul-arz was framed, and the question raised by the present suit was to what extent the provisions of the wajib-ul-arz of 1873 were applicable. The Court of first instance (Subordinate Judge of Mainpuri) gave the plaintiff a decree for such portion of the property sold as was in the mahal in which the plaintiff was a co-sharer, but dismissed the suit as regards the remainder. The plaintiff appealed, and the lower appellate Court (District Judge of Mainpuri) allowed his appeal and decreed the claim in full, holding that the plaintiff as a "*hissadar deh*" was entitled as against strangers to a decree for the whole property sold. The defendants appealed to the High Court.

Hon'ble Pandit *Madan Mohan Malaviya*, for the appellants.

Babu *Satya Chandra Mukerji*, for the respondent.

BANERJI and RICHARDS, JJ.—This appeal arises out of a suit for pre-emption. The defendants vendees are strangers to the village. The plaintiff is a co-sharer in the village, but not in the mahal in which the property in question is situated. He asserts that under the terms of the wajib-ul-arz he has a right to pre-empt the property. As observed by the Full Bench in *Dalganjan Singh* v. *Kalka Singh* (1), each case depends upon the construction of the particular wajib-ul-arz which records the custom or contract which is the basis of the suit. In this case the wajib-ul-arz relied on is the wajib-ul-arz prepared in 1873, which records a custom of pre-emption to the effect that in the case of a sale or mortgage by a shareholder, a claim for pre-emption may be brought by (i) own brothers and nephews, (ii) cousins who are co-sharers, (iii) co-sharers in the patti, and (iv) shareholders in the village (*hissadaran deh*). The plaintiff is admittedly a shareholder in the village. It has been found in answer to the issues referred by us to the Court below that at the time when the wajib-ul-arz was prepared the village had been divided into two pattis, which evidently means two mahals. It has subsequently been divided into more mahals by partition, but no new wajib-ul-arz has been prepared.

(1) (1899) I. L. R., 22 All., 1.

1905

JANKI v. RAM PARTAP SINGH.

We have, therefore, to construe the wajib-ul-arz prepared in 1873. As that document confers a right of pre-emption upon shareholders in the patti, and next upon shareholders in the village, it evidently means that a person who does not own a share in the patti or mahal in which the property sold is situate but owns a share in the village is entitled to claim pre-emption as against an outsider, otherwise the provision as to the right of pre-emption existing in a shareholder in the village would be wholly meaningless. The case of a person who claims pre-emption under a wajib-ul-arz conferring a right of pre-emption only upon co-sharers in the village which has subsequently been divided into mahals is different. In the present instance, as we have already said, the village had already been sub-divided into pattis or mahals before the wajib-ul-arz was prepared, and in spite of such sub-division the right of pre-emption was given to a person who might own a share in the village, although he did not own a share in the patti. That state of things still exists in the village in question, and, therefore, as against an outsider to the village, a person holding a share in the village is entitled to pre-empt. The plaintiff being such a person has the right of pre-emption claimed by him. The appeal, therefore, fails, and is accordingly dismissed with costs.

Appeal dismissed.

1905
November 17.

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

SHIAM LAL AND OTHERS (DEFENDANTS) *v.* GANESHI LAL (PLAINTIFF).*

Hindu law—Joint Hindu family—Suit against father and son on promissory note given by father—Son exempted from liability on note—Liability of son as member of a joint family.

In a suit brought against father and son in a joint Hindu family upon a promissory note executed by the father alone, the son was exempted from liability on the note on the ground that he was no party to it: in other words the suit as against the son was dismissed. A decree, however, was passed against the father, and in execution thereof the decree-holder's assignee caused a portion of the joint family property to be sold. *Held* on suit by the son for a declaration exempting his interest in the joint family property

* Appeal No. 31 of 1905 under section 10 of the Letters Patent.