

1905

NASIB-UN-
NISSA
v.
GHAFUR-UD-
DIN.

judgment-debtor has not been prejudiced in any way by the omission to verify the inventory. This is not a matter which affects the merits of the case or the jurisdiction of the Court. We, therefore, decline to interfere with the order of the Court below, and dismiss the appeal with costs.

Appeal dismissed.

1905

November 9.

Before Mr. Justice Knox and Mr. Justice Aikman.

MUHAMMAD ALI (PLAINTIFF) v. HUKAM KUNWAR AND OTHERS
(DEFENDANTS)*.

Pre-emption—Wajib-ul-arz—Co-sharer—Owner of a plot of grove land.

Held that a person who buys a plot of grove land in a village does not thereby become a co-sharer in the village so as to entitle him to enforce a right of pre-emption under a wajib-ul-arz which confers such right upon co-sharers. *Dakhni Din v. Rahim-un-nissa* (1) and *Ali Husain Khan v. Tasaddug Husain Khan* (2) referred to.

THIS was a suit for pre-emption based upon the wajib-ul-arz. The plaintiff founded his claim on the fact that he had purchased a grove formerly belonging to the vendors, situated in the village in which was the property in suit; that this made him a co-sharer in the village, and under the wajib-ul-arz he had a right to pre-empt. The Court of first instance (Munsif of Sahaswan) decreed the claim. The defendants vendees appealed, and the lower appellate Court (Subordinate Judge of Shahjahanpur) set aside the munsif's decree and dismissed the plaintiff's suit. The plaintiff accordingly appealed to the High Court.

The Hon'ble Pandit *Sundar Lal* and Pandit *Baldeo Ram Dave*, for the appellant.

Babu Parbati Charan Chatterji, for the respondents.

KNOX and AIKMAN, JJ.—The sole question which we have to decide in this Second Appeal is whether a person who buys a plot of grove land in a village becomes a co-sharer in the village so as to entitle him to enforce a right of pre-emption under the wajib-ul-arz which confers such right upon co-sharers. The learned vakil for the appellant relied on the case of *Dakhni Din v. Rahim-un-nissa* (1). In that case the person who sought to

* Second Appeal No. 96 of 1904 from a decree of Babu Nihala Chandra, Subordinate Judge of Shahjahanpur, dated the 25th November, 1903, reversing a decree of Maulvi Muhammad Azim-ud-din, Munsif of Sahaswan, dated the 11th of July, 1903.

(1) (1894) L. L. R., 16 All., 412.

(2) *Supra*, p. 124.

enforce the right of pre-emption had obtained certain plots of land belonging to the zamindar and in his occupation. It was held that he thereby became a person responsible under section 146 of Act XIX of 1873 for the revenue for the time being assessed upon the mahal. This responsibility for land revenue was insisted on in another case decided by this Court, *Ali Husain Khan v. Tasaddug Husain Khan* (1). If we apply that test to the present case, the purchaser of a grove would not be a co-sharer, inasmuch as he is not liable to payment of Government revenue. We think the Court below was right, and we dismiss the appeal with costs.

1905

MUHAMMAD
ALI
v.
HUKAM
KUNWAR.

Appeal dismissed.

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

TIRBENI SAHAI (PLAINTIFF) v. MUHAMMAD UMAR AND OTHERS
(DEPENDANTS).*

1905
November 9.

Hindu law—Inheritance—Joint Hindu family—Lunacy.

A member of a joint Hindu family who has acquired by his birth an interest in the joint family property is not divested of that interest by subsequently becoming insane. *Deo Kishen v. Budh Prakash* (2) followed.

THIS was a suit to recover the plaintiff's share as a member of a joint Hindu family in certain houses which had been sold in execution of a decree against the plaintiff's brother. The plaintiff was a lunatic, and sued through his mother, Lachmin Kunwar. His lunacy, however, was not congenital, but dated from some 15 or 16 years before suit. The Court of first instance (Munsif of East Budaun) held that the plaintiff upon becoming insane lost all right to a share in the family property, and accordingly dismissed the suit. The plaintiff appealed. The lower appellate Court (District Judge of Shahjahanpur) found that lunacy would not divest the plaintiff of property already vested, but that the property in suit was acquired after the plaintiff became insane, and therefore never vested in him. The District Judge therefore confirmed the Munsif's decree, though upon a different ground. The plaintiff appealed to the High Court.

* Second Appeal No. 13 of 1904, from a decree of C. D. Steel, Esq., District Judge of Shahjahanpur, dated the 12th of November, 1903, confirming a decree of Maulvi Saiyid Muhammad Hidayat Ali, Munsif of Budaun, dated the 23rd July 1903.

(1) *Supra*, p. 124.

(2) (1883) L. L. R., 5 All., 509.