

1905

PHANI  
SINGH  
v.  
NAWAB  
SINGH.

learned Judge of this Court by striking out therefrom the injunction granted by it. The respondents must pay the costs of this appeal.

*Decree modified.*

1905  
August 1.

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

JAI DAT AND ANOTHER (PLAINTIFFS) v. RAM BADAL (DEFENDANT).\*

*Pre-emption—Wajib-ul-arz—Construction of document.*

The pre-emptive clause of a wajib-ul-arz was drawn up in the following terms:—"In case of great necessity each co-sharer is entitled to transfer his property as recorded in the *khawat*, and the near co-sharers and the patti-dars can claim a pre-emptive right; but out of them the one who is nearer will have a prior right to do so."

*Held* that the right of pre-emption only arose on a sale to a stranger. If the sale was to a co-sharer, no right of suit accrued to a nearer co-sharer.

IN a mahal consisting of four *thoks* one Mithu Dichhit, who was a co-sharer, sold a small share to Ram Badal and others, co-sharers in a different *thok*. One Jai Dat and his wife, Raghunathi, filed a suit for pre-emption of this sale, claiming the right to pre-empt as being nearer co-sharers, *i.e.* co-sharers in the same *thok* with the vendor. The Court of first instance (Officiating Munsif of Deoria) gave the plaintiff a decree. On appeal, however, by Ram Badal, the District Judge of Gorakhpur, on a construction of the *wajib-ul-arz* reversed the Munsif's decision and dismissed the suit. The material terms of the *wajib-ul-arz* were as follows:—"In case of great necessity each co-sharer is entitled to transfer his property as recorded in the *khawat*, and the near co-sharers and the patti-dars can claim a pre-emptive right; but out of them the one who is nearer will have a prior right to do so." The lower appellate Court held that the right of pre-emption arose only on a sale to a stranger, but not when the sale was to a co-sharer in the mahal, although the plaintiff might be a nearer co-sharer than the vendee. The plaintiffs appealed to the High Court.

\* Second Appeal No. 1082 of 1903, from a decree of W. Tudball, Esq., District Judge of Gorakhpur, dated the 24th of June 1903, reversing a decree of Babu Gokul Prasad, Officiating Munsif of Deoria, District Gorakhpur, dated the 11th of May 1903.

Mr. *Abdul Raouf* (for whom Mr. *M. L. Agarwala*), for the appellant.

Babu *Sital Prasad Ghosh*, for the respondents.

STANLEY, C.J. and BURKITT, J.—This is an appeal in a pre-emption suit. The village in which the pre-empted share is situate, though an undivided mahal, is sub-divided into four *thoks*. A co-sharer in one of those *thoks* has sold his interest to a co-sharer in another *thok*. The pre-emptors are co-sharers in the *thok* in which the property sold is situated. They claim that under the terms of the *wajib-ul-arz* they have a right of pre-emption against the vendee. The learned District Judge has held that under the terms of the *wajib-ul-arz* there is no right of pre-emption by one co-sharer against another in the case of a sale to a co-sharer. The terms of the *wajib-ul-arz*, no doubt, are somewhat vague, but we are not prepared to dissent from the opinion expressed by the learned District Judge. The *wajib-ul-arz* does not, like the great majority of instruments of that class with which we have dealt in this Court, commence by saying that when a co-sharer wants to sell his property, he is bound to offer it to his fellow co-sharers in certain categories in succession, and that only in the case of the co-sharers in all the categories refusing to purchase he can sell to a stranger. The *wajib-ul-arz* in this case appears to be directed solely against a sale to a stranger, and seems to provide that when a co-sharer has sold to a stranger then the other co-sharers in the mahal may pre-empt, and further in the case of rival pre-emptors it provides that a nearer co-sharer shall have preference over those more remote, that is to say, if two pre-emption suits were instituted, the suit instituted by the nearer co-sharer would be successful while that by the more remote would fail. This, we think, is the meaning to be put on this *wajib-ul-arz*. We are unable to say that the decision of the District Judge is wrong. We, therefore, dismiss the appeal with costs.

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*Appeal dismissed.*