20th of May 1907, and does not appear to have been brought to the notice of the learned Judge. The fact that the property involved is of little value is a matter which cannot be taken into consideration in determining the rights of the parties. In view of the ruling above referred to we must allow the appeal. We set aside the decree of the learned Judge of this Court and restore the decree of the lower appellate Court with costs in all Courts.

1907

MAHADEI v. BALDEO.

Appeal decreed.

1907 *December* 13.

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

BAHAL SINGH AND ANOTHER (PLAINTIFFS) *v.* MUBARIK-UN-NISSA AND OTHERS (DEFENDANTS).*

Pre-emption—Wajib-ul-arz—Construction of document—"Shurkayan-i-shikmi."

The wajib-ul-arz of a village (Kandhla) in the Muzaffarnagar district gave a right of pre-emption, first to *shikmi* co-sharer (*shurkayan-i-shikmi*), secondly, to share-holders descended from a common ancestor (*shurkayan-i-jaddi*), and thirdly, to *khewatdars* in the mahal (*khewatdaran-i-mahal*). The mahal was divided into seven *pattis* and the land in dispute was situated in *patti* Khail, *thok* Bhuria. The pre-emptors were *co-sharers* in *patti* Khail. One of the vendees was a co-sharer in the mahal, but not in *patti* Khail *Held* that, regarding the whole context of the wajib-ul-arz, the expression *shurkayan-i-shikmi* was intended to denote relatives by blood and not co-sharers in any sub-division of the mahal, and the plaintiffs were not therefore entitled to pre-emption. *Jeymul* v. *Kesree* (1) and *Abdul Shakur* v. *Mendai* (2) referred to.

THIS was a suit for pre-emption of a zamindari share in mauza Kandhla in the district of Muzaffarnagar. The property in dispute formed part of khewat Nos. 22 and 33, portion of a mahal of 15 biswas. The mahal was divided into seven *pattis*, and the land in dispute was situate in *patti* Khail, *thok* Bhuria. The plaintiffs were co-sharers in *patti* Khail while the defendant Musammat Mubarik-un-nissa was a co-sharer in the mahal, but not in *patti* Khail. In the wajib-ul-arz of the village the persons in whose favour a right of pre-emption was given were classified under three heads :—

* Second Appeal No. 1077 of 1905, from a decree of L. G. Evans, District Judge of Saharanpur, dated the 22nd of June 1905 reversing a decree of Madho Das, Subordinate Judge of Saharanpur, dated the 1st of September 1904.

(1) Agra. F. B. 1866. p. 171. (2) (1901) I. L. R., 23 All., 260.

1907

BAHAL SINGH v. MUBARIK-UN-NISSA.

(1) Shikmi share-holders (*shurkayan-i-shikmi*).

(2) Share-holders descended from a common ancestor (*shurkayan-i-jaddi*) and

(3) Khewat-dars in the mahal (*khewatdaran-i-mahal*).

The court of first instance (Subordinate Judge of Saharanpur) held that the plaintiffs had a preferential right of pre-emption and gave them a decree, but on appeal the District Judge reversed this decree, holding that neither the plaintiffs nor the defendants answered the description of *shikmi* share-holders, but came under the third clause as other *khewatdars* in the mahal, and that therefore the plaintiffs had no preferential right of pre-emption as against the defendants. The plaintiffs appealed to the High Court.

Sir *Walter Colvin*, Mr. *M. L. Agarwala* and Babu *Parbati Charan Chatterji*, for the appellants.

Pandit *Moti Lal Nehru*, Mr. *R. Malcomson* and Maulvi *Muhammad Ishaq*, for the respondents.

STANLEY, C.J., and BURKITT, J.—The sole question for determination in this appeal turns upon the meaning to be assigned to the expression "*shikmi*" share-holders used in the wajib-ul-arz of village Kandhla in the Saharanpur judgeship. On the part of the appellant it is contended that the word "*shikmi*" denotes those who are more closely connected with the vendor in a *thok* and *patti* in which the property, the subject of the sale, is situate than proprietors in another *patti* of the same mahal who are not proprietors in such *thok* or *patti*. On the part of the respondents the contention is that the expression *shikmi* share-holders denotes share-holders born of the same *shikam*, that is, uterine brothers or blood relations. The property in dispute formed part of khewat Nos. 22 and 33, portion of a mahal of 15 biswas. The mahal is divided into seven *pattis* and the land in dispute is situate in *patti* Khail, *thok* Bhuria. It is admitted that the plaintiffs appellants are co-sharers in *patti* Khail, while the defendant Musammat Mubarik-un-nissa is a co-sharer in the mahal, but not in *patti* Khail. In the wajib-ul-arz of the village the persons in whose favour a right of pre-emption is given are classified under three heads:—

(1) Shikmi share-holders (*shurkayan-i-shikmi*).

(2) Share-holders descended from a common ancestor (*shurkayan-i-jaddi*) and

(3) Khewatdars in the mahal (*khewatdaran-i-mahal*).

The learned Subordinate Judge held that the plaintiffs had a preferential right of pre-emption and gave them a decree, but on appeal the learned District Judge reversed this decree, holding that neither the plaintiffs nor the defendants answered the description of *shikmi* share-holders, but came under the third clause as other *khewatdars* in the mahal, and that therefore the plaintiffs had no preferential right of pre-emption as against the defendants.

The word "*shikmi*" in connection with co-sharers in land is rarely met with and is a vague and indefinite term. We have been referred to two cases only in which the expression "*shikmi* share-holders," is to be found, and we know of no other. In the case of *Jeymul* v. *Kesree* (1) the construction of a wajib-ul-arz in which the expression "*shikmi shurkayan*" occurred was referred to a Full Bench. In the referring order it is stated that the expression "*shikmi* sharers" was said to have acquired the local meaning of sharers who are blood relations, when these words occur in administration papers in the Saharanpur district, and reference is made to a judgment of the Principal Sadr Amin in which is a statement to the effect that the pleaders on both sides admitted that the phrase *shikmi* sharers expresses no distinct meaning, but that its local meaning is "a sharer who is a blood relation to another sharer." The case was referred to the Full Bench so that a definite rule of construction might be laid down. According to the head-note the Full Bench decided that the proper construction of the words "*shikmi shurkayan*" was that they gave a preference to the sharers in the *thoks* over those who were merely sharers in the village. This head-note is altogether inaccurate, for we find on reference to the judgment that the Full Bench declined to decide what the meaning of the expression was or whether it had a special local meaning. They decided the case upon a later passage in the wajib-ul-arz, which gave to the share-holders in the same *thok* a preferential right of pre-emption over share-holders

(1) Agra. F. B., 1866, p. 171.

1907

BAHAL SINGH v. MUBARIK-UN-NISSA.

who were merely sharers in the village. This case therefore does not help the appellants.

The other case to which we were referred is that of *Abdul Shakur* v. *Mendai* (1). The wajib-ul-arz which was considered in that case conferred the right of pre-emption on seven classes of persons, each class having a preferential right over the class next following. The first two classes were composed of persons who were related to the vendor, the remaining classes consisted of persons who were co-sharers of the vendor. By reference to the record we find that in the first class came own brothers; in the second class near relations, and in the third *hissadaran shikmi*. In the fourth class came the lambardar of the *behri*, or *patti* and in the fifth a co-sharer in the *patti*, while the sixth and seventh classes were respectively composed of the lambardars and co-sharers in the village. Sir Arthur Strachey, C.J. and Banerji, J., held that the expression "*hissadaran shikmi*" did not necessarily apply to any idea of subordination, but was rightly considered as applicable to persons who were co-sharers in the particular *khata* of the *patti* in which the land sold was situate. In that case it will be noticed that the first two classes exhausted the relations by blood, and it was therefore necessary to attach a meaning to the words "*hissadaran shikmi*" other than that of blood relations. Now, as our Brother Banerji pointed out in his judgment in that case, the various clauses of a wajib-ul-arz are not recorded with as much precision as is desirable, and therefore the intention must be gathered in each case from the whole context and the surrounding circumstances. He referred to the derivation of the word "*shikmi*" and pointed out that its primary meaning was inclusion, but the question is, inclusion in what? If we look to the derivation of the word, we should be disposed to hold that it referred to blood relations, such as uterine brothers, that is, the fruit of the womb, and not to share-holders in a mahal or a sub-division of a mahal.

The contention that the framers of the wajib-ul-arz in this case had blood relationship in view when this expression was used gathers some support from the fact that the second category

(1) (1901) I. L. R., 23 All., 260.

of pre-emptors is composed of share-holders (*shurkayan*) descended from a common ancestor. Relationship by blood rather than propinquity or vicinage would seem to have been in view in determining the priorities of claimants for pre-emption. A sequence of classes according to which share-holders descended from a common ancestor would be interposed between share-holders in a sub-division of the mahal and share-holders in the mahal would not be natural. In the third category the word "*shurkayan*" is not used to denote share-holders, but a different word, namely, "*khewatdar*." If the word "*shikmi*" implies connection with the vendor by reference to inclusion in property in which both are share-holders, it must have reference to a sub-division of the mahal itself, seeing that in the third category come co-sharers in the mahal. To what sub-division of the mahal then would it apply? Is it to co-sharers in the *patti* or in the *thok*, or in the *khata* or a sub-division of the *khata*, and is there a preferential right given to share-holders in each of these sub-divisions, and if so, in what order? If we accept the argument advanced on behalf of the appellants, we must define *shikmi* share-holders as limited to share-holders in the *thok*, or in the *patti*, or in the *khata*, or in the sub-divisions of the *khata*. In other words we should be considerably enlarging the category of pre-emptors. We do not think that this was intended. Regarding the whole context of the wajib-ul-arz, we think that the expression "*shikmi shurkayan*" was intended to denote relatives by blood and not co-sharers in any sub-division of the mahal.

For these reasons we think the learned District Judge rightly dismissed the plaintiffs' suit. We dismiss the appeal with costs.

Appeal dismissed.