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is nothing in the judgment to show that the property sold was the property of a joint Hindu family, although the father and the son were joint. Nor was the point, which has been discussed before us, even mentioned in that judgment. Even the custom under which the claim was preferred in that case was a custom which gave the members of a *lambardar's* family a right to pre-empt when the *lambardar* sold his share. It was a very peculiar custom, and we do not think that the case is any authority or any guide to us in the present case. The decision in the case of *Gandharp Singh v. Sahib Singh* (1) does not help us either in the present case. In our opinion the plaintiffs have no right whatsoever to pre-empt in the circumstances of the present case. We, therefore, allow the appeal. The plaintiffs' suit will stand dismissed with costs in both courts.

Appeal decreed.

Before Sir Grimwood Meares, Chief Justice, and Justice Sir Pramada Charan Banerji.

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 January, 6.

LAGHMI PRASAD (DEFENDANT) v. MUSAMMAT PARBATI (PLAINTIFF) AND MUSAMMAT SARUPI (DEFENDANT).*

Construction of will—Hindu law—Adoption—Power of adoption conferred upon the two widows of the testator.

A Hindu died leaving him surviving two widows. By his will he left all his property to the widows, and conferred on them authority to adopt in the following terms:—"They (the widows) may, if necessary, adopt a boy of good family according to their necessity." *Held* that the authority so given must be exercised by both the widows jointly, and that an adoption made by one of the widows after the death of the other was of no effect. *Narasimha Appa Row v. Parthasarathy Appa Row* (2) referred to.

THE facts of this case were as follows:—

By will, dated the 21st of July, 1907, Din Dayal directed that after his death his two wives, Musammat Sarupi and Musammat Ram Dei "will by all means be like myself the owners of and have authority over the properties of which I am up to this time in possession without the participation of any one else. They

* First Appeal No. 84 of 1917, from a decree of Jogindra Nath Chaudhri, Subordinate Judge of Saharanpur, dated the 30th of January, 1917.

(1) (1885) I. L. R., 7 All., 184. (2) (1913) I. L. R., 37 Mad., 199.

will have all powers of transfer, gift, etc., like myself. They may, if necessary, adopt a boy of good family according to their necessity." The testator died on the 19th of August, 1907. Both wives survived him. Musammat Ram Dei died about the year 1911, and on the 3rd of January 1916, Musammat Sarupi executed a deed whereby she purported to adopt Lachhmi Prasad.

The present suit was brought by Musammat Parbati, the daughter of Ram Dei, who sought to have the adoption set aside upon the ground that it had not been made in accordance with the power given by the will of her grand father Din Dayal. The court of first instance decreed the claim. The defendant Lachhmi Prasad, the adopted son, appealed to the High Court.

The Hon'ble Dr. *Tej Bahadur Sapru* and Pandit *Baldeo Ram Dave*, for the appellant.

Mr. *B. E. O'Connor*, Mr. *Nihal Chand* and The Hon'ble Pandit *Moti Lal Nehru*, for the respondents.

MEARS, C. J., and BANERJI, J. :—By will, dated the 21st of July, 1907, Din Dayal directed that after his death his two wives, Musammat Sarupi and Musammat Ram Dei " will by all means be like myself the owners of and have authority over the properties of which I am up to this time in possession without the participation of any one else. They will have all powers of transfer, gift, etc., like myself. They may, if necessary, adopt a boy of good family according to their necessity." The testator died on the 19th of August, 1907. Both wives survived him. Musammat Ram Dei had a daughter, Musammat Parbati, who was the plaintiff in the original action. Musammat Ram Dei died in or about the year 1911, and on the 3rd of January, 1916, Musammat Sarupi executed a deed whereby she purported to adopt the appellant. The question in this appeal is whether, on the true construction of the will, it was competent for the senior widow to adopt to her late husband. If she were competent, then the appellant is, as he claims to be, heir to the estate of Musammat Ram Dei. We are of opinion that the power of adoption given by the will was a joint permissive one. It created no obligation to adopt, but it did require, first, a joint agreement to adopt; next, a selection of an heir by both of the wives; and finally a

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formal legal adoption. Our attention has been called to the case of *Narasimha Appa Row v. Parthasarathy Appa Row* (1). That was a case very like the present one, with this exception that the testator by his will specifically gave a one-half share to each of his two wives. We, however, are of opinion that that difference does not create any real distinction and that we ought to follow the propositions which the Privy Council laid down as regards the exercise of joint powers. We refer specially to page 225, where their Lordships lay down in general terms the intelligible principle that where a power is given to A and B jointly, that power can be exercised only in the way directed by the donor namely, by A and B together doing the necessary acts. If it should happen that one of the joint donees dies, the survivor is not competent to perform the act which by the very directions of the testator require the concurrence of both. In this case the power to take in adoption ceased at the moment of the junior widow's death in 1911. As regards the disposition of the testator's property we are of opinion that the will gave the two ladies the whole of Din Dayal's property absolutely. It follows, therefore, that in our view the appellant is a complete stranger as far as regards any rights to any share in the property of the late Musamat Ram Dei, and therefore, agreeing as we do with the finding of the learned Subordinate Judge, we dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

BIHARI LAL AND OTHERS (PLAINTIFFS) v. MOHAN SINGH

AND ANOTHER (DEFENDANTS). *

Pre-emption - Vendee a stranger at date of suit, but becoming a co-sharee pending the suit.

During the pendency of a suit for pre-emption of a share in zamindari property the defendant vendee acquired by gift a share in the village, which put him as regards pre-emption on the same level with the plaintiff pre-emptor.

*Second Appeal No. 867 of 1918, from a decree of D R. Lylo, District Judge of Agra, dated the 14th of February, 1918, confirming a decree of Babu Kauleshar Nath Rai, Subordinate Judge of Agra, dated the 18th of June, 1917.

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