

Before Mr. Justice Sulaiman and Mr. Justice Kendall.

1929
January,
18.

LALTA PRASAD (PLAINTIFF) v. CHUNNI SINGH AND ANOTHER (DEFENDANTS).*

Act (Local) No. XI of 1922 (Agra Pre-emption Act), section 12—Pre-emption—Holders of specific plots of muafi lands—Wajib-ul-arz recording custom of pre-emption but negating right of holders of muafi lands.

When a right of pre-emption is recorded in a *wajib-ul-arz* of the mahal, the question as to what persons are entitled to exercise the right is to be determined by reference to section 12 of the Act and not to the recitals in the *wajib-ul-arz*. Where a *wajib-ul-arz*, framed before the Agra Pre-emption Act, recorded a custom of pre-emption but there was a recital in it to the effect that holders of resumed *muafi* lands were not co-sharers and not entitled to pre-empt, it was held that such persons were entitled, under section 12 of the Act, to pre-empt a sale of resumed *muafi* land in which they were coparceners.

THE facts of the case sufficiently appear from the judgement of the Court.

Babu Piary Lal Banerji and Munshi Sarkar Bahadur Johari, for the appellant.

Munshi Narain Prasad Asthana (for whom Munshi Shiva Prasad Sinha), for the respondents.

SULAIMAN and KENDALL, JJ. :—In this case part of the resumed *muafi* land comprised in one *khewat* and assessed to Government revenue has been sold. The plaintiff is a co-sharer in this very *khewat*. An earlier *wajib-ul-arz* prepared for the village records a custom of pre-emption, but there is also a recital in it to the effect that the co-sharers of the village have no concern with the resumed *muafi*. The defendants are strangers. The court of first instance decreed the claim for pre-

* Second Appeal No. 1642 of 1926, from a decree of E. T. Thurston, District Judge of Budaun, dated the 14th of August, 1926, reversing a decree of Sheobaran Singh, Munsif of Bisauli, dated the 27th of April, 1926.

1929

 LALTA
 PRASAD
 v.
 CHUNNI
 SINGH.

emption, but on appeal the District Judge has dismissed it, holding that having regard to the recital in the *wajib-ul-arz* there is no right of pre-emption in *muafi* lands. We are unable to concur in this view. When a right of pre-emption is recorded in a *wajib-ul-arz* of the mahal, a right must be deemed to exist in view of the provisions of section 5 of the Act. The question as to what persons are entitled to exercise this right is to be determined by reference to section 12 of the Act and not to the recitals in the *wajib-ul-arz*. Under the last-mentioned section when a petty proprietary interest is sold, coparceners in that interest have the first right of pre-emption. The holders of these resumed *muafis* are holders of specific plots in the mahal and are obviously not entitled to take part in the administration of its affairs and do not own any land in the mahal jointly with the co-sharers. They are accordingly petty proprietors within the meaning of section 4, sub-clause (7). The plaintiff therefore has the first right of pre-emption. We accordingly allow this appeal and setting aside the decree of the lower appellate court restore that of the first court with costs in all courts.

Before Mr. Justice Banerji and Mr. Justice King.

AKRAM-UN-NISSA BIBI AND OTHERS (DEFENDANTS) v.
 MUSTAFA-UN-NISSA BIBI (PLAINTIFF).*

 1929
 January,
 21.

*Act No. IV of 1882 (Transfer of Property Act), section 53—
 Fraudulent transfer—Principle applicable to transfer
 under a fraudulent and collusive decree on award.*

The principles embodied in section 53 of the Transfer of Property Act are in accordance with the general principles of justice, equity and good conscience and as such should be taken as a guide by the courts even in cases where the provisions of section 53 do not in terms apply, e.g. because the

* First Appeal No. 78 of 1926, from a decree of Girish Prasad Mathur, Additional Subordinate Judge of Budaun, dated the 18th of November, 1925.