

*Before Sir Shah Muhammad Sulaiman, Acting Chief Justice,  
and Mr. Justice King.*

1931  
May, 13.

BASDEO NARAIN SINGH AND ANOTHER (PLAINTIFFS) *v.*  
BIRJU SINGH AND ANOTHER (DEFENDANTS).\*

*Agra Pre-emption Act (Local Act XI of 1922), section 12(2)  
—Mahal consisting of portions of five villages—Co-sharer  
in one of these portions seeking to pre-empt a share in  
another of these portions—Right of pre-emption as be-  
tween co-sharers in same village but in different mahals.*

A mahal consisted of portions of five villages; the pre-emptor was a sharer in the portion, included in the mahal, of the first village; the share sold was in the portion, included in the mahal, of the second village. The vendee was an absolute stranger to the mahal. Both the pre-emptor and the vendee had shares in the second village, but outside the mahal aforesaid.

*Held* that section 12(2) of the Agra Pre-emption Act contemplates that there would be no right of pre-emption in favour of a co-sharer in one village (or portion of village) in respect of a share sold in another village (or portion of village), even though both the villages (or portions of villages) happened to be in the same mahal.

The fact that the pre-emptor was a co-sharer in the second village, but outside the mahal, would give him a right of pre-emption under section 12(1) against a stranger, but as the vendee was also a co-sharer in that village, though outside the mahal, the pre-emptor had no preferential right.

*Mr. Shiva Prasad Sinha*, for the appellants.

*Dr. N. C. Vaish*, for the respondents.

SULAIMAN, A. C. J., and KING, J. :—This is a plaintiffs' appeal arising out of a suit for pre-emption. Mahal Mahwapar consists of portions of five villages. The plaintiffs are co-sharers in the same mahal Mahwapar but their shares are situated in the first village. The vendor was a co-sharer in the same mahal, but his share was situated in the second village. The vendee had no share within mahal Mahwapar.

\*Second Appeal No. 977 of 1928, from a decree of Aghor Nath Mukerji, District Judge of Azamgarh, dated the 17th of January, 1928, confirming a decree of Mathura Prasad, Munsif of Haveli, dated the 16th of August, 1927.

1981

---

 BASDEO  
 NARAIN  
 SINGH  
 v.  
 BIRJI  
 SINGH.

At the same time part of the village in which the vendor had a share was situated outside the mahal and in two other mahals. Both the plaintiffs and the vendee were co-sharers in the second village Bhardpur Pachhwar, but outside mahal Mahwapur.

It is, therefore, quite obvious that the plaintiffs cannot claim a preferential right by virtue of their being co-sharers in village Bhardpur Pachhwar alone, because there the plaintiffs and the vendee are both on the same footing as they own shares in that village outside the mahal in dispute.

The plaintiffs certainly have an advantage over the vendee in this respect that they are co-sharers in mahal Mahwapur, because they own shares in a village which is included in this mahal. The vendor, however, is a co-sharer in the same mahal but in another village.

If sub-section (1) of section 12 had stood by itself. it would have given the plaintiffs a preferential right by virtue of their being co-shares in the same mahal with the vendor, but sub-section (2) restricts the right conferred upon them by sub-section (1).

Under sub-section (1), as against a vendee who is a perfect stranger, co-sharers in the mahal, whether they are in the same village with the vendor or not, as well as co-sharers in the same village, whether in the same mahal with the vendor or not, have a preferential right. The legislature has not interfered with the right of pre-emption in favour of co-sharers in the same village which is conferred by sub-section (1). But sub-section (2) provides that where a mahal includes more villages than one, no person having proprietary rights in any such village shall be entitled by reason thereof to a right of pre-emption in respect of any other such village. It undoubtedly contemplates that the right of pre-emption should not be exercised outside the village in which the pre-emptor

1931

BAGDEO  
NARAIN  
SINGH  
v.  
BIRJU  
SINGH.

is a co-sharer, that is to say there would be no right of pre-emption in favour of a proprietor of one village in respect of a share sold in another village, even though both the villages happen to be within the same mahal. The proprietor in one village, by reason of his proprietary rights, is necessarily a co-sharer in the mahal which includes this village along with the village of the vendor, but under sub-section (2) he is not allowed a right to pre-empt a share in the other village. The policy of the legislature appears to be that the right of pre-emption should be confined to proprietors in the same village and not extended to shares sold in other villages. In our opinion it would make no difference whether one mahal consists of two or more complete villages or only portions of two or more villages.

On the findings returned by the lower appellate court it is quite clear that the plaintiffs have no preference over the defendant vendee. The appeal is accordingly dismissed with costs.

### REVISIONAL CIVIL.

*Before Sir Shah Muhammad Sulaiman, Acting Chief Justice,  
and Mr. Justice King.*

1931  
May, 14.

RISAL SINGH (PLAINTIFF) v. FAQIRA SINGH AND AN-  
OTHER (DEFENDANTS).\*

*Civil Procedure Code, section 115—"Case decided"—Order setting aside an award in a pending suit.*

No revision lies from an order setting aside an award. Such an order disposes of a proceeding during the pendency of the suit, and the decision of the question whether the award is valid or not does not amount to a "case decided" within the meaning of section 115 of the Civil Procedure Code.

Dr. K. N. Malaviya, for the applicant.

Mr. G. S. Pathak, for the opposite parties.

SULAIMAN, A. C. J. :—This is a plaintiff's application in revision from an order of the Munsif of