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chhatta, but when other people, who may be entire strangers to Batuk Prasad, have come into the house it may not suit Batuk Prasad to let the chhatta stand. This is a matter which should rest entirely on the discretion of Batuk Prasad and the court should not interfere with that discretion. Besides, as we have pointed out, there is the burden on the wall of Batuk Prasad of the weight of the chhatta; and the chhatta, if allowed to stand, would not enable Batuk Prasad to open the clear-story windows. In the circumstances we do not see how we can disallow the relief to the plaintiff.

Lastly it was argued that there should be some limit to the enforcement of the agreement contained in the sale deed. It was argued that it might be that in a far distant time a descendant of the plaintiff might want a descendant of the defendants to remove the chhatta and, in that case, to agree to the contention of the then plaintiff would be very hard on the then defendant. This case does not call for an answer to that contention but probably it is provided by the Full Bench case of this Court in *Aulad Ali* v. *Ali Athar* (1).

The result is that this appeal fails and is hereby dismissed with costs.

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

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June, 11.

SAIFUL BIBI (DEFENDANT) *v.* ABDUL AZIZ KHAN (PLAINTIFF) AND INAYAT KHAN (DEFENDANT)*

Agra Pre-emption Act (Local Act XI of 1922), section 4(10)—Sale—Transfer in lieu of dower debt—Whether pre-emptible—Hiba-bil-ewaz—*Transfer of Property Act (IV of 1882), section 54.*

A transfer of immovable property made by a husband to his wife in lieu of an existing dower debt due to her is a sale

* Second Appeal No. 1307 of 1929, from a decree of Muhammad Taqi Khan, Subordinate Judge of Mirzapur, dated the 30th of July, 1929, reversing a decree of Niraj Nath Mukerji, Munsif of Mirzapur, dated the 11th of February 1929.

(1) (1927) I.L.R., 49 All., 527.

within the meaning of section 54 of the Transfer of Property Act and therefore is a sale as defined by section 4(10) of the Agra Pre-emption Act and is pre-emptible. In a case governed by the Agra Pre-emption Act, the question whether such a transfer is, in Muhammadan law, not a sale but a *hiba-bil-ewaz* does not arise.

Mr. *A. M. Khwaja*, for the appellant.

Mr. *T. A. K. Sherwani*, for the respondent.

SULAIMAN, A.C.J., and BANERJI, J. :—This is a defendant's appeal arising out of a suit for pre-emption. The vendor was the husband and transferred the property in question to his wife, the vendee, under a document dated the 16th of July, 1927, which was styled as a sale deed. The document recited that the amount of her dower debt was Rs. 5,000 and no part of it had been paid, and that the transfer was made in lieu of Rs. 2,506 out of that amount.

One of the pleas in defence was that the suit for pre-emption did not lie because the transaction was a *hiba-bil-ewaz* and not a sale at all. This contention was accepted by the first court and the suit was dismissed. On appeal the learned Subordinate Judge has held that the transaction was one of sale and was pre-emptible. The learned advocate for the defendant has drawn our attention to two cases of the Oudh Chief Court where it seems to have been held that a transfer of property by a husband to his wife in satisfaction of her dower debt was *hiba-bil-ewaz* and not at all a sale and was not therefore pre-emptible under the Oudh Laws Act: *Bashir Ahmad* v. *Zobaida Khatun* (1), followed in *Talib Ali* v. *Kaniz Fatima* (2). In the earlier case at page 268 the learned Judges seem inclined to think that a transaction can be a sale within the meaning of section 54 only when it was in lieu of money, and that a claim for debt was a 'chose in action' and a transfer in lieu of an existing debt would not be a sale. With great respect, we are unable to agree with this observation. A transfer of property in lieu of an existing debt in cash would be a transfer for a price paid so as to bring it within section 54 of the Transfer of Property Act.

(1) (1925) 92 Indian Cases, 265. (2) (1927) 102 Indian Cases, 142.

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This view has been consistently held in this Court in the cases of *Ghulam Mustafa* v. *Hurmat* (1), *Fida Ali* v. *Muzaffar Ali* (2) and *Nathu* v. *Shadi* (3).

The same view has prevailed in the Calcutta and the Madras High Courts: *Abbas Ali* v. *Karim Bakhsh* (4), *Bibijanbi* v. *Hazarath Saib* (5) and *Esahaq Chowdhry* v. *Abedunnessa Bibi* (6).

If a question were to arise under the Muhammadan law we would have to look to what is meant by a *hibabil-ewaz* under that law. The question in this case however is under the Agra Pre-emption Act. Section 4 (10) provides that a sale in the Pre-emption Act means a sale as defined in the Transfer of Property Act. In this way the Agra Pre-emption Act incorporates the definition of "sale" as given in section 54 of the latter Act, but the other provisions of that Act are not incorporated. All that we have to see here is whether the transfer of immovable property made in consideration of a part of an existing dower debt is a sale within the meaning of that definition. It has been held that a dower debt is a debt like every other debt, and therefore a transfer in lieu of it must be a sale as defined in that section. We accordingly hold that the view taken by the learned Judge was perfectly correct.

The learned Subordinate Judge instead of fixing a definite date for payment as is contemplated by order XX, rule 14 of the Code of Civil Procedure allowed time to the plaintiff to pay the pre-emption money within two months of the date of his decree becoming final. We fix two months from this date as the date for payment. If the amount is deposited within the time fixed, the plaintiff will have his costs in the lower appellate court and in this Court, and the parties will bear their own costs in the first court. If the amount is not deposited within the time allowed, the suit shall stand dismissed with costs in all courts.

(1) (1880) I.L.R., 2 All., 854.
(2) (1882) I.L.R., 5 All., 65.
(3) (1915) I.L.R., 37 All., 522.
(4) (1908) 13 C.W.N., 160.
(5) (1911) 21 M.L.J., 958.
(6) (1914) I.L.R., 42 Cal., 361.