

police officer under section 77 of the Criminal Procedure Code. There is no procedure laid down by the Code that the court should ask the sureties to ask the accused to surrender. There is no doubt that the accused were aware that the sessions court had upheld the sentence of imprisonment and in the depositions of the accused they do not allege that they were not aware. Moreover this is shown by the fact that on the 9th of January, 1940, an application for revision to the High Court was made on their behalf.

The facts therefore are clear. In our opinion the accused did commit contempt of court in the first instance by evading the warrants of the sessions court and in the second place the accused did commit contempt of court by having the misrepresentation made in their application of revision to this Court that they were in jail and should be released on bail. We therefore find that the accused are guilty of contempt of court.

The sentence which we impose on the accused is three months' simple imprisonment each for contempt of court. The accused will now be taken into custody.

APPELLATE CIVIL

Before Mr. Justice Iqbal Ahmad and Mr. Justice Bajpai

MAHABIR RAI AND OTHERS (DEFENDANTS) *v.* RAJENDRA
RAI AND OTHERS (PLAINTIFFS)*

Agra Pre-emption Act (Local Act XI of 1922), section 12(1), class II—"Sub-division" of a mahal—What constitutes a "sub-division".

The phrase "sub-division of the mahal", in section 12(1), class II, of the Agra Pre-emption Act, connotes the idea of division of some sort between the co-sharers of the mahal. The necessary result of the division or sub-division of a mahal is the allotment of specific areas of the mahal to the co-sharers of a particular division or sub-division. The joint coparcenary interest possessed by all the co-sharers of the mahal is put an end to and in lieu of the joint interest possessed by

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*First Appeal No. 222 of 1936, from a decree of Muhammad Zamir-uddin, Civil Judge of Ghazipur, dated the 18th of August, 1935.

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them in the land of the mahal specific areas are allotted in severalty to the co-sharers of a particular division or sub-division.

Where in a mahal there were no thoks or pattis, and all the co-sharers of the mahal jointly owned all the plots in the village, but three serial numbers, i.e., 1, 2 and 3, were entered in the khewat and each number was said to consist of a 5 anna 4 pie share, and the revenue of each number was entered separately and the names of particular co-sharers were entered as against a particular number, it was held that there was no sub-division of the mahal and no preferential right of pre-emption under class II of section 12(1) of the Agra Pre-emption Act could arise.

Dr. K. N. Katju and Mr. S. N. Katju, for the appellants.

Messrs. P. L. Banerji and Janaki Prasad, for the respondents.

IQBAL AHMAD and BAJPAI, JJ.:—This is a vendee's appeal arising out of a pre-emption suit and the sole question that arises for consideration in the appeal is whether the plaintiffs had a preferential right of pre-emption as against the vendees.

The zamindari share sold is in village and mahal Puraniyan. Both the plaintiffs and the vendees were co-sharers in this village on the date of the sale sought to be pre-empted. The plaintiffs, however, claimed a preferential right of pre-emption on the allegation that the share sold was in a sub-division of the mahal in which the plaintiffs and the vendors were co-sharers and the vendees were not. On this allegation the plaintiffs maintained that they came within class II of the pre-emptors prescribed by section 12 of the Agra Pre-emption Act (XI of 1922). Class II comprises "Co-sharers in the sub-division of the mahal in which the property is situated."

The vendees on the other hand alleged that Puraniyan was an undivided mahal and that there were no divisions or sub-divisions of that mahal and asserted that as they were also co-sharers in the village the plaintiffs had not a preferential right of pre-emption as against them. In short the vendees' case was that they and the plaintiffs fell within class V of the pre-emptors

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recognized by section 12. Class V comprises "Co-sharers in the village." The court below, relying on an unreported decision of SULAIMAN, C.J., in *Markande Singh v. Harkaran Singh* (1), gave effect to the plaintiffs' contention and decreed their suit. The learned CHIEF JUSTICE in that case made the following observations: "But the plaintiff is a co-sharer in khata khewat Nos. 3 and 13 and the property sold by the vendor lies in khata khewat Nos. 6 and 13, whereas the defendants by virtue of the deed of exchange have acquired shares in khata khewat No. 14 only. The court below has held that the plaintiff has no preference as regards khata khewat No. 13 because there is no specific area assigned to this khata in the khewat, although the revenue is separately assessed in each khata. This conclusion is obviously wrong because although no area is assigned, as it could not be, there is a separate share assigned to khata khewat No. 13 which therefore is undoubtedly a separate and small sub-division of mahal."

The decision of the appeal depends on the answer to the question whether or not there are divisions and sub-divisions of mahal Puraniyan. A certified copy of the khewat of mahal Puraniyan is on the record and it shows that there are no thoks or pattis in that village. In other words the mahal is not divided into thoks and pattis. In the column of "Serial number" there are, however, three serial numbers, viz. 1, 2 and 3, entered in the khewat and in the next column which is the column of "Amount of the share and revenue together with cesses" a 5 anna 4 pie share is entered as against each serial number. Further, in each serial number the revenue and the cess of the 5 anna 4 pie share is entered separately. Then in the column of co-sharers the names of sharers who own the 5 anna 4 pie share of each serial number are entered.

The share sold and pre-empted belonged to certain co-sharers of serial number 3 and the plaintiffs are also co-sharers in that serial number whereas the vendees,

(1) S. A No. 1378 of 1932, decided on 21st August, 1934.

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on the date of the sale, were co-sharers in serial numbers 1 and 2 and not in serial number 3. The plaintiffs' case was that each serial number constituted a separate khata-khewat and a separate sub-division of the mahal. The vendees on the other hand urged that the mahal was a joint undivided mahal and the serial numbers were merely indicative of the extent of the share owned by the various sharers entered as against each serial number.

The patwari of the village was examined as a witness in the case and the pleaders of the parties made certain statements as regards the constitution of the village. From the patwari's evidence and the statements of the pleaders it is clear that there are in all 341 plots in the village and all these plots are jointly owned by all the co-sharers in all the three serial numbers and that the *sir* land of the co-sharers of those numbers is joint. No plot or field is separately assigned to any particular serial number and there is no division in the village showing that any particular area of the village specifically appertains to any particular serial number of the khewat. In short all the 341 plots of the village are joint and are owned by all the co-sharers in all the serial numbers jointly.

In this state of the facts we find it impossible to hold that each serial number entered in the khewat constitutes a division or sub-division of the mahal. The phrase "sub-division of the mahal" connotes the idea of division of some sort between the co-sharers of the village or the mahal. It is impossible to have a sub-division without a division of a mahal or a village. The necessary result of the division or sub-division of a mahal is the allotment of specific areas of the mahal to the co-sharers of a particular division or sub-division. By division or sub-division of a mahal the joint coparcenary interest possessed by all the co-sharers of the mahal is put an end to and in lieu of the joint interest possessed by them in the land of the village specific areas are allotted in severalty to the co-sharers of a particular division or sub-division. In the present

case, as already stated, all the co-sharers of mahal Puraniyan jointly owned all the plots in the village. There is, therefore, no division or sub-division of that village. The entry of separate serial numbers in the khewat cannot, therefore, by itself be tantamount to a division or sub-division of the village. It is true that the revenue of each serial number is separately entered. Nevertheless, the mahal being joint, each and every co-sharer is jointly responsible for the payment of that revenue irrespective of the fact that his name is not entered in a particular serial number.

For the reasons given above we with all respect dissent from the unreported decision noted above.

Reliance was also placed by the respondents' counsel on the decision in *Murli Tiwari v. Muhammad Idris* (1). In that case it was held that a khata khewat constitutes a sub-division of a mahal within the meaning of section 12 (1), class II, of the Pre-emption Act. In that case it appeared from the khewat that there were separate khatas assigned to separate groups of co-sharers which had specific areas fixed and on which Government revenue was separately assessed. In the case before us, as stated before, separate areas are not assigned to the separate serial numbers and, therefore, it cannot be held that there are separate khata-khewats constituting separate sub-divisions of the village.

We, therefore, hold that the plaintiffs had not a preferential right of pre-emption as against the vendees. Accordingly we allow this appeal, set aside the decree of the court below and dismiss the plaintiffs' suit with costs here and below.

(1) (1929) I.L.R. 52 All. 538.