

held. We remand the case for trial of this issue and allow ten days for objections to be made to the finding and will then dispose of the other pleas taken in appeal.

1881

BAHRAICHI
CHAUDHRI
v.
SURJU NAIK.

Before Mr. Justice Brodhurst and Mr. Justice Tyrrell.

BHUREY MAL (DEFENDANT) v. NAWAL SINGH (PLAINTIFF).*

1882
January 13.

Pre-emption—Co-sharer joining relatives with him in claiming right—Effect on co-sharer's right—Stranger.

A co-sharer of an estate, who has a right of pre-emption, does not, merely by joining with himself members of his family, who are not co-sharers in such estate, in a suit to enforce such right, defeat such right. *Manna Singh v. Ramadhin Singh* (1) distinguished.

THE plaintiffs in this suit claimed possession as mortgagees of a certain share in the thoke of a mahál called Multan, basing their claim upon the *wajibularz*. That document provided that, in the event of a co-sharer desiring to sell or mortgage his share, he should offer it in the first instance to his "brothers;" secondly, to "near cousins"; thirdly, to co-sharers in his thoke; and, fourthly, to co-sharers in the mahál; after which he might offer it to strangers. The mortgage in respect of which the plaintiffs claimed was one by the widow of Sahuria, the deceased proprietor of the share in question. She had given a possessory mortgage of the share to the defendant Bhurey Mal. The latter was a co-sharer in thoke Multan, but was not a blood relation of Sahuria. The plaintiffs, Bahal Singh, Dal Singh, and Nawal Singh, were severally a second cousin, a third cousin, and a fifth cousin of Sahuria. Nawal Singh was the only plaintiff who was a co-sharer in thoke Multan. The Court of first instance gave the plaintiffs a decree for possession of the share in question as mortgagees. On appeal by the defendant Bhurey Mal, the lower appellate Court held that the plaintiffs Bahal Singh and Dal Singh should not have been included in this decree, as though near cousins of Sahuria, within the meaning of the *wajibularz*, they were not co-sharers in thoke Multan, and therefore had not, under that instrument, a preferential right to that of the defendant Bhurey Mal. Holding, however, that the plaintiff Nawal

* Second Appeal, No. 224 of 1881, from a decree of K.M. King, Esq., Judge of Saharanpur, dated the 16th February, 1881, modifying a decree of Maulvi Kazim Ali, Munsif of Shamli, dated the 30th September, 1880.

(1) See *ante*, p. 252.

1882

BHUREY MAL
v.
NAWAL
SINGH.

Singh, as a "near cousin" and a co-sharer in that thoke, had a better right to the mortgage than the defendant Bhurey Mal, it affirmed the decree of the first Court as regards the former. With regard to the defendant's contention that the plaintiff Nawal Singh had lost his right by associating "strangers" with him in his claim, the lower appellate Court held that the plaintiffs Bahal Singh and Dal Singh were not "strangers," and therefore the plaintiff Nawal Singh had not lost his right by associating them with himself in his claim.

On second appeal to the High Court the defendant Bhurey Mal again contended that the plaintiff Nawal Singh had lost his right by associating the other plaintiffs with himself in his claim, as they were "strangers."

The *Senior Government Pleader* (Lala Juala Prasad) and *Munshi Sukh Ram*, for the appellant.

Babu Oprokash Chandar Mukarji, for the respondent.

The judgment of the Court (BRODHURST, J., and TYRRELL, J.) was delivered by

TYRRELL, J.—None of the pleas are sustainable. The last plea has no cogency, as the respondent, having joined with him certain members of his family, who are found to be strangers *quoad* the estate, has not merely by so doing, defeated his pre-emptive right as asserted in this suit. His position is distinguishable in this respect from that of the purchaser whose case was before this Court in *Manna Singh v. Ramadhin Singh* (1). The principle laid down in that ruling is therefore inapplicable to the case now before us. The appeal is dismissed with costs.

Appeal dismissed.

(1) See *ante*, p. 252.