

panied by the Hindustani expression "*ba hissa-i-musawi*" (in equal shares) or "*nisf nisf*" (half and half), and these expressions occur in no less than six places. In our opinion they leave no doubt that the liability of the lessees was intended to be several, but equal in extent.

Under this view of the case we partially decree the appeal, and, without altering the amount decreed by the lower appellate Court, modify the decree of that Court so as to decree the sum of Rs. 486-9 against the defendants, heirs of Hira Lal, and a like sum of Rs. 486-9 against the defendants, heirs of Khiali Ram, the sums aforesaid being severally recoverable, with proportionate costs incurred by the plaintiff in the Courts below, from the estates of the two persons above-named respectively; and, on the other hand, the defendants to recover from the plaintiff the costs incurred by them in the lower Courts to the extent of the dismissal of the plaintiff's claim, half of such costs being recoverable by the defendants, heirs of Hira Lal, and the other half by the defendants, heirs of Khiali Ram. But as this appeal has partially prevailed, we make no order as to the costs incurred in this Court.

Before Mr. Justice Tyrrell and Mr. Justice Mahmood.

MADAN MOHAN v. RAMDIAL AND ANOTHER.*

Certificate for collection of debts—Grant to several persons jointly—Act XXVII of 1860.

A certificate under Act XXVII of 1860 should not be granted to several persons jointly, but, where there are several claimants to the certificate, the District Court should determine which of such persons has the best title to the certificate, and grant the same accordingly.

MADAN MOHAN, the brother's son of one Radhe Lal, deceased, applied for a certificate to collect the debts due to the estate of the deceased under Act XXVII of 1860. Certain persons objected, severally claiming to be entitled to the grant of the certificate, among them Dwarka, Madan Mohan's brother, and Ramdial, the son of another brother of the deceased. The District Court made an order granting a joint certificate to Madan Mohan, Dwarka, and Ramdial.

* First Appeal No. 82 of 1882, from an order of J. H. Prinsep, Esq., Judge of Cawnpore, dated the 25th January, 1882.

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MADAN
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On appeal to the High Court, Madan Mohan contended that the District Court was wrong to grant a joint certificate to three persons, and should have determined which of the three should have preference.

Munshi *Hanuman Prasad* and Maulvi *Mehdi Hasan*, for the appellants.

Pandit *Nand Lal*, for the respondent Ramdial.

The Court (TYRRELL, J. and MAHMOOD, J.) made the following order of remand:—

TYRRELL, J.—The question of the superior title to get a certificate to collect the debts due to the estate of Radhe Lal is now narrowed down in the case before us to the competitive claims *inter se* of his two nephews, Madan Mohan and Ramdial, who obtained from the Judge of Cawnpore a joint certificate in that behalf along with a third person who has withdrawn his pretensions by a petition presented to us.

We have no hesitation in holding that the grant of a joint certificate to two or more persons is not only fraught with obvious inconvenience, but is opposed to the whole spirit and policy of the Act No. XXVII. of 1860, which was specifically directed to providing greater security for persons paying to the representatives of deceased persons debts due to their estates, and to facilitating the collection of such debts by removing all doubts as to the legal title to demand and recover the same.

It is clear to us that the issue of joint certificates would ordinarily defeat instead of subserving both those objects. We are fortified in this view by a ruling of a Bench of this Court in *in re Goura v. Kekerree Singh* (1), wherein it was ruled that “Act XXVII of 1860 (an Act for facilitating the collection of debts on successions) gives a Judge no power to grant a joint certificate to two persons; his duty is to determine which of the applicants has the better right.”

We therefore set aside the Judge's order in this respect and remand the case for a finding on the issue which of the two claim-

(1) N.-W. P. H. C. Rep., 1872, p. 60.

ants, Madan Mohan or Ramdial, is in all respects better entitled to have a certificate under the Act.

On the receipt of the Judge's finding on this issue, ten days will be allowed for objections from a date to be fixed by the Registrar.

Case remanded accordingly.

Before Mr. Justice Tyrrell and Mr. Justice Mahmood.

BHAWANI PRASAD (DEFENDANT) v. DAMRU (PLAINTIFF)

Pre-emption—Suit by pre-emptor and "stranger" to enforce right—Effect on pre-emptor's right—"Justice, equity and good conscience"—Muhammadan Law.

Held, applying the doctrine of the Muhammadan law of pre-emption, such doctrine being in accordance with justice, equity and good conscience, that a co-sharer in a village who had under the *wajib-ul-arz* a right of pre-emption in respect of the sale of a share who joined a "stranger," (that is, a person who had not such right,) with himself in suing to enforce such right, thereby forfeited such right.

Sheodyal Ram v. Bhyro Ram (1); *Guneshee Lal v. Zaran Ali* (2); and *Fakir Rawot v. Sheikh Emambaksh* (3) referred to.

The plaintiff Damru was the co-sharer of the patti in which a two annas four pies share was owned by Ranjit, father of the defendant Kunji. Ranjit executed a *bybilwafa* mortgage of his share in favour of Bhawani Prasad, defendant, on the 15th April, 1879. Under the deed the mortgage-debt was to be repaid by instalments within the year, and the mortgagee was to be entitled to foreclose the mortgage on default of due payment of the instalments. Default occurred, and the notice of foreclosure was issued by the mortgagee on the 2nd February, 1880, and the year of grace expired on the 2nd February, 1881. Thereupon Bhawani, defendant-mortgagee, had his name entered in the revenue records as owner of the share, without any opposition by the heirs of Ranjit, who appeared to have died in the meantime. On the 19th August, 1881, a fresh deed was executed between Bhawani Prasad, defendant, and the heirs of Ranjit, whereby the former abandoned the possession he had acquired by foreclosure, and accepted a fresh

* Second Appeal No. 61 of 1882, from a decree of W. Kave, Esq., Officiating Commissioner of Jhānsi, dated the 23rd November, 1881, modifying a decree of J. J. McLean, Esq., Assistant Commissioner of Jhānsi, dated the 22nd September, 1881.

(1) N.-W. P. S. D. A. Rep., 1860, p. 53. (2) N.-W. P. H. C. Rep., 1870, p. 343.

(3) B. L. R., F. B. Rul., 35.

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MADAN
MOHAN
v.
RAMDIAL.

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