

Before Mr. Justice Mohammad Raza.

MASIH UDDIN AHMAD (PLAINTIFF-APPELLANT) v.  
MUNIR AHMAD AND ANOTHER (DEFENDANTS-RESPONDENTS).\*

1925  
November,  
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*Pre-emption—Under-proprietary plots, sale of,—Superior proprietor and under-proprietor, right of pre-emption of.*

*Held*, that in a sale of under-proprietary plots in a village the superior proprietor and a person holding under-proprietary rights in the village are equally entitled to pre-empt the property sold and the question as to which of the two is entitled to get the property should be decided by drawing lots.

Messrs. *Niamatullah and Naimullah*, for the appellant.

Messrs. *Ram Bharose Lal and Raj Narain Shukla*, for the respondent No. 2.

RAZA, J. :—This is a plaintiff's appeal arising out of a pre-emption case. The property sold was an under-proprietary plot in a village of which the plaintiff is the superior proprietor. The vendee holds under-proprietary rights in the village.

The plaintiff brought the suit, alleging that he had a preferential right to pre-empt the property. The suit was contested by the vendee (defendant No. 2).

The learned Munsif rejected the claim, holding that the vendee had preference as against the plaintiff. His decision was upheld by the court of first appeal.

The plaintiff has appealed to this Court, challenging the finding on the point decided against him.

I think this appeal should be allowed. Both the lower courts were of opinion that the ruling in

\* Second Civil Appeal No. 312 of 1924, against the decree of Raghubar Dayal Shukla, First Additional District Judge of Bara Banki, dated the 14th of April, 1924, confirming the decree of Dwarika Prasad, Munsif of Ramsanehigat (at Bara Banki), dated the 31st of January, 1924.

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*Muhammad Abdul Aziz v. Bhagwan Das* (1), applied to this case. I am not prepared to agree with them on that point. In my opinion the ruling in the *Hon'ble Raja Ali Mohammad Khan v. Ram Bilas* and *another* (2) is fully applicable to this case. The plaintiff and the vendee are equally entitled to pre-empt the property. The question as to who is entitled to the property should be decided by drawing lots.

Hence I allow the appeal and, setting aside the decrees of the courts below, remand the case to the first court under order XLI, rule 23, schedule I, of the Code of Civil Procedure, with directions to re-admit the suit under its original number in the register and proceed to determine the suit according to law.

Costs will abide the result.

*Appeal allowed and case remanded.*

Before Mr. Justice Gokaran Nath Misra.

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KARINGAN (DEFENDANT NO. 2, APPELLANT) v. HARIHAR DUTT *alias* BHOLAI (PLAINTIFF) AND RAJA RAM (DEFENDANT NO. 1, RESPONDENTS).\*

*United Provinces Land Revenue Act (III of 1901), section 39*  
—*Partition of cultivatory holding, maintainability of suit for.*

*Held*, that section 39, clause (2) of the United Provinces Land Revenue Act cannot be construed as a bar to the claim of a plaintiff to get his share in the cultivatory holding divided by means of a partition suit filed in a civil court. It only says that if such a partition has been arrived at and the distribution of land has taken place it shall not be recorded in

\* Second Civil Appeal No. 319 of 1924, against the decree of N. Walker, District Judge of Gonda, dated the 23rd of April, confirming the decree of Mahmud Hasan Khan, Subordinate Judge of Bahraich, dated the 29th of October, 1921.

(1) 8 O.L.J., 560.

(2) 9 O.C., 271.