

## APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan and Mr. Justice  
Gokaran Nath Misra.

1927  
September,  
14.

MIRZA ABDUR RAHMAN BEG (DEFENDANT-APPELLANT)  
v. MIRZA BARKAT BEG (PLAINTIFF) AND ANOTHER  
(DEPENDENT-RESPONDENT).\*

*Oudh Laws Act (XVIII of 1876) section 9, clause (1)—Words  
“In order of relationship” in section 9, clause (1), meaning  
of.*

The words “in order of their relationship” in clause (1) of section 9 of the Oudh Laws Act simply mean “according to the degree in the line of relationship” with the vendor. Relationship in that section means consanguinity from a common stock.

The words “in order of their relationship” do not refer only to such a class of persons amongst whom, on the fiction that the vendor was dead and the inheritance opened on the date of the sale, the heir or the heirs of the vendor exist. Those words simply mean “according to the degree in the line of relationship” with the vendor. The circle of relationship may be, and generally is, much wider than the circle covering the heir or the heirs only, and in the law of pre-emption as enacted in the provisions of Chapter 2 of the Oudh Laws Act, 1876, there is nothing to justify the courts to interpret “in order of their relationship” in the restricted sense. *Muhammad Ayub Khan v. Musammat Kaniz Fatima* (1), *Musammat Jafri Begam v. Musammat Gulab Kuar* (2), and *Karam Husain v. Raghubar Dayal* (3), followed. *Karim Bakhsh v. Jehandad Khan* (4), and *Mohammad Taki Ali Khan v. Mohammad Ali* (5), dissented from.

Mr. Haider Husain, for the appellant.

Mr. Khaliquzzaman, for the respondent.

\*Second Civil Appeal No. 46 of 1927, against the decree of Pandit Krishna Nand Pande, Additional Subordinate Judge of Sultanpur, dated the 9th of November, 1926, confirming the decree of Pandit Shiam Manohar Tewari, Munsif of Musafirkhana at Sultanpur, dated the 17th of June, 1926, decreeing the plaintiff's claim.

(1) (1911) 14 O.C., 193.

(2) (1901) 7 O.C., 1.

(3) (1901) 4 O.C., 397.

(4) 74 Punjab, Record, Vol. XLI of 1906.

(5) Jwala Prasad's Select Cases, Appendix p. 7.

HASAN and MISRA, JJ. :—This is the defendant vendee's appeal in a suit for pre-emption from the decree of the Additional Subordinate Judge of Sultanpur, dated the 9th of November, 1926, affirming the decree of the Munsif of Musafirkhana, dated the 17th of June, 1926.

Under a deed of sale, dated the 20th of April, 1925, Habib Beg and Shafi Beg, on behalf of himself and his brother Islam Beg acting under a power of attorney, transferred 1/27th share in mahal Azam Beg and 1/6th share in mahal Razzak Beg, situate in the village of Parwa, pargana Baraunsa, district Sultanpur, to Mirza Abdur Rahman Beg for a sum of Rs. 375. The vendors and the plaintiff pre-emptor are co-sharers in the said mahals, and it is agreed that the vendee is also a co-sharer in the same mahals. The question for determination, therefore, is as to whether the pre-emptor or the vendee has a preferential right to acquire the property in suit. The answer to this question depends upon the interpretation of clause (1) of section 9 of the Oudh Laws Act, 1876. This clause is as follows :—

“First, to co-sharers of the sub-division (if any) of the tenure in which the property is comprised, in order of their relationship to the vendor or mortgagor;

and the precise words of the clause required to be interpreted are “in order of their relationship.”

The vendee is the son of Muhammad Yar Beg. Muhammad Yar Beg had a brother, Ishaq Beg. The vendors are the sons of Ishaq Beg. The pre-emptor is the brother of Musammat Salima, who was the wife of Ishaq Beg and the mother of the vendors. On those facts the courts below have held that the pre-emptor is nearer in relationship to the vendor than the vendee, and on that ground have decreed the claim for pre-emption.

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Mitra, JJ.

The argument in appeal is that the nearness in the relationship should be determined on the basis of the position of the parties in the line of inheritance. In support of this argument reliance is placed upon a Full Bench decision of the late Chief Court of the Punjab in the case of *Karim Bakhsh v. Jehandad Khan* (1). It is admitted, and the admission is correct in law, that in the event of the opening of the inheritance to the estate of the vendors to-day, the vendee is entitled to inherit in preference to the pre-emptor.

We are of opinion that neither the view taken by the courts below nor the argument advanced in support of the appeal, before us, is correct. In the case of *Muhammad Ayub Khan v. Musammat Kaniz Fatima Bibi* (2) Mr. LINDSAY (now Mr. Justice LINDSAY) in the late Court of the Judicial Commissioner of Oudh decided that nearness in degree of relationship was the only test for determining the preferential right to pre-empt. To this extent we agree with that decision, and we do not agree with the Full Bench ruling of the Punjab Chief Court that co-sharers "in order of their relationship" only connote the co-sharers who are the nearest heirs. It seems to us that it is technically incorrect to say that there are nearer heirs and remoter heirs. On the opening of inheritance such person or persons who are entitled in law to succeed, is the heir or are the heirs. The words "in order of their relationship" do not refer, we think, only to such a class of persons amongst whom, on the fiction that the vendor was dead and the inheritance opened on the date of the sale, the heir or the heirs of the vendor exist. We think that those words simply mean "according to the degree in the line of relationship" with the vendor. This is clearly the natural and the most grammatical meaning. The circle of relationship may be, and generally is, much wider than the circle covering

(1) 74 Punjab Record, Vol. XLI of (2) (1911) 14 O.C., 193.  
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the heir or the heirs only, and in the law of pre-emption as enacted in the provisions of Chapter 2 of the Oudh Law Act, 1876, there is nothing to justify the courts to interpret "in order of their relationship" in the restricted sense. For the same reason we do not agree with the opinion expressed in *Mohammad Taki Ali Khan v. Mohammad Ali* (1) "that relationship must be such as would allow of inheritance."

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*Hasan and  
Misra, JJ.*

Obviously no difficulty of interpretation can arise in a case where both the vendee and the pre-emptor are co-sharers but neither is related to the vendor, nor in a case where only one of them is so related and the other is not. But difficulty arises where both the vendee and the pre-emptor are related to the vendor, and the present case is one of that nature.

Now the degree of relationship in which two persons stand to a third person necessarily connotes the idea that the three are the descendants of one common ancestor. This cannot be true of a case in which the vendee and the vendor are descended from one common stock and the pre-emptor and the vendor from another. It seems to us a contradiction in terms to say that one person is nearer in degree of relationship than another person to a third person when all the three are not descended from one common stock. It was held in *Karam Husain v. Raghubar Dayal* (2), that the "order of relationship" relates to consanguinity from a common stock. It was again so held in *Musammatt Jafri Begam v. Musammatt Gulab Kuar* (3). Lastly it was held in *Muhammad Ayub Khan v. Musammatt Kaniz Fatima Bibi* (4), already referred to, that the relationship mentioned in section 9 of the Oudh Laws Act, 1876, means consanguinity from a common stock. The law clearly

(1) Jwala Prasad's Select Cases. (2) (1901) 4 O.C., 397.

Appendix p. 7.

(3) (1904) 7 O.C., 6.

(4) (1911) 14 O.C., 198.

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requires the selection of one person of the nearest degree or by lot where there are several persons of equal degree in relationship to the vendor for the purpose of giving the preferential right to buy. This in the very nature of things implies that the competitors and the vendors are descended from a common stock.

Hasan and  
Misra, J.J.

On the above interpretation it must be held that the plaintiff has failed to establish that he is nearer in degree than the vendee to the vendor; and that he has also failed to establish that he is equal in degree with the vendee to the vendor. His claim for pre-emption must, therefore, fail.

We accordingly allow this appeal, set aside the decree of the courts below and dismiss the plaintiff's suit with costs in all courts.

*Appeal allowed.*

### APPELLATE CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge, and  
Mr. Justice Muhammad Raza.*

1927  
September,  
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JALALUDDIN KHAN (DEFENDENT-APPELLANT) v. RAM-  
PAL AND ANOTHER (PLAINTIFFS), AND OTHERS (DEFEND-  
ENDENTS-RESPONDENTS).\*

*Co-sharer—Common land—Right of a co-sharer to appropriate to himself a specific portion of common land—Long possession by a co-sharer of a specific portion of common land—Other co-sharers' right to eject him or his transferee.*

*Held*, that one co-sharer has no right to appropriate to himself a specific portion of the common land, and to exclude his co-sharers from all use and enjoyment of the same without a lawful partition. But where a person has been in possession of a piece of joint land for a long time without any let or hindrance by the other co-sharers, the latter have no

\* Second Civil Appeal No. 95 of 1927, against the decree of Gokul Prasad, Subordinate Judge of Partabgarh, dated the 4th of January, 1927, upholding the decree of Hiran Kumar Ghoshal, Munsiff of Partabgarh, dated the 19th of October, 1926, decreeing the plaintiffs' suit.