

1928.
 MUSSAMMAT
 BIBI
 SALEHA
 v.
 HAJI
 AMIRUDDIN.

DAS, J.

was entitled and the basis of the decision in the words of Mr. Daniels, Judicial Commissioner, is that "the transaction amounted to a sale of under-proprietary right and gave rise to a right of pre-emption." Whether that learned Judge was right in the view which he took that the transaction amounted to a sale I am unable to say. But the decision itself is not an authority for the proposition that a mukarraridar is entitled to claim pre-emption. The only other case to which we have been referred is the decision of the Calcutta High Court in *Surama Musalmani v. Munsif Danes Mahomed*(1). It is impossible from the report to say what the facts in that case were, and in any event I am not willing to differ from the decision of Sultan Ahmed, J., in the case to which I have referred.

In my opinion, the case has been correctly decided by the lower appellate Court, and I must dismiss this appeal with costs.

WORT, J.—I entirely agree.

APPELLATE CIVIL.

Before Das and Wort, JJ.

THAKUR RAGHUNANDAN SAHAY SINGH

v.

THAKUR DRIPA NATH SAHAI SINGH.*

Co-sharer, settlement by—land allotted to another co-sharer on partition—settlement, whether binding.

A co-sharer landlord to whom a parcel of land has been allotted on partition does not take it subject to a settlement made by his co-sharer without his concurrence when the land was the joint property of all the co-sharers.

*Second Appeals nos. 748, 805, 904 and 1028 of 1926, from a decision of G. Rowland, Esq., I.C.S., Judicial Commissioner of Chota Nagpur, dated the 20th March, 1926, reversing a decision of Babu Ramesh Chandra Sur, Munsif of Palamau, dated the 15th May, 1924.

(1) (1907-08) 12 Cal. W. N. cexliv (Notes).

Madho Lal v. Mahadeo Rai(1), *Niranjan Mukherjee v. Sm. Soudamini Dasi*(2), and *Byjnath Lal v. Ramoodeen Choudhry*(3), followed.

The facts of the case material to this report are stated in the judgment of Das, J.

P. Dayal and *S. Dayal*, for the appellants.

S. Saran, *S. M. Mullick* and *Ragho Saran*, for the respondents.

DAS, J.—These appeals arise out of suits instituted by the plaintiffs for recovery of the disputed lands as malik's bakast. The plaintiffs are the appellants in this Court. The plaintiffs and the defendants in two of the appeals, viz. Appeals 748 and 805, are co-sharer landlords and are members of the same family. So far as the other appellants are concerned, viz. appellant in Appeals nos. 904 and 1028, they are the purchasers of some of the proprietary interest of some of the members of the family. The disputed lands are admittedly in the possession of the defendants who, as I have said, are also co-sharer landlords. The defendants contest the suits on the ground that they have occupancy rights in the disputed lands. The learned Judge in the Court below has given effect to the defence raised by the defendants and dismissed the plaintiffs' suits. The plaintiffs appeal to this Court.

It is not disputed that the defendants took settlement of an 8 pies interest from one Bhounath Pathak who is represented as plaintiffs in appeals 904 and 1028. So far as the plaintiffs in the other two appeals are concerned they have nothing whatever to do with the settlement which was made in favour of the defendants by Bhounath Pathak. It appears to have been the case of the plaintiffs in all the suits that the defendants were temporary lease-holders and that as the term of the lease had expired, the plaintiffs were entitled to khas possession of the disputed lands. But

1928.

THAKUR
RAGHU-
NANDAN
SAHAY
SINGH

v.
THAKUR
DRIPA
NATH
SAHAI
SINGH.

DAS, J.

(1) (1928) 9 Pat. L. T. 259.

(2) (1925-26) 30 Cal. W. N. 511.

(3) (1878-74) 1 I. A. 106.

1928.

THAKUR
RAGHU-
NANDAN
SAHAY
SINGH
v.
THAKUR
DRIPA
NATH
SAHAI
SINGH.

in appeals 748 and 805 another ground was taken, and that was to the effect that the plaintiffs in those appeals were not in any way bound by the settlement made in favour of the defendants by Bhounath Pathak. In the record-of-rights the defendants were recorded as Dowami Thicadars under the plaintiffs in appeals 904 and 1028. A partition has now taken place between the co-sharers and the disputed lands have been allotted to the takhtas of the plaintiffs in these different suits.

DAS, J.

So far as appeals 904 and 1028 are concerned they must stand dismissed. The plaintiffs in those suits are Bhounath Pathak and the members of his family and they are obviously bound by the settlement made by them in favour of the defendants. It was contended by Mr. Parmeshwar Dayal that the defendants were mere tenants-at-will under Bhounath Pathak; but obviously this is not a correct way of describing the position which was occupied by the defendants certainly under Bhounath Pathak and the members of his family. As the learned District Judge has pointed out the terms "Thicadar" has a special significance in Palamau, and we have no doubt whatever that the decision of the learned Judge, so far as these appeals are concerned, is right and must be affirmed. Second Appeals 904 and 1028 must, therefore, stand dismissed with costs.

But a different consideration arises in appeals 748 and 805. The plaintiffs in these appeals were not parties to the settlement made in favour of the defendants, and it is difficult to understand why they should be bound by a settlement made not by them but by their co-sharers. It was held by this Court in *Madho Lal v. Mahadeo Rai*⁽¹⁾ that a co-sharer has no right to deal with joint property in such a way as to affect the rights of the other co-sharers, and that a person to whom a parcel of land has been allotted by a decree for partition does not take it

(1) (1928) 9 P. L. T. 259.

subject to a settlement made by his former co-sharers without his concurrence when the land was the joint property of all the co-sharers. The principle laid down in the case to which I have just referred is not a new principle at all. It was affirmed in distinct terms by the Calcutta High Court in *Niranjan Mukherjee v. Sm. Soudamini Dasi*⁽¹⁾ where it was pointed out that the general principle is that a co-sharer in joint property cannot by dealing with such property affect the interest of the other sharers therein. If I may say so, that principle was affirmed in a very conspicuous manner by their Lordships of the Judicial Committee in *Baijnath Lall v. Ramoodeen Chowdry*⁽²⁾. This point is not discussed in the judgments of either of the Courts below, and the reason no doubt is, as Mr. Sushil Madhab Mullick suggests, that it did not occur to those who were appearing for the plaintiffs to urge this point; but it is obvious that this point must now be investigated by the lower Appellate Court. On general principle the plaintiffs in Second Appeals 748 and 805 ought not to be bound by the settlement made in favour of the defendants by Bhounath Pathak. But there is a point which arises in the arguments of Mr. Sushil Madhab Mullick and that point must now be investigated by the Courts below. It was contended before us that the disputed lands were allotted to the plaintiffs in appeals 748 and 805 in the partition between them and their co-sharers as raiyati lands and were rated as such. It is impossible for us in this Court to enter upon a question of fact of this nature since it is not discussed, as I have said, in any of the judgments of the Courts below. It is obvious that if the disputed lands were rated as raiyati lands then the plaintiffs must have a greater difficulty in succeeding in their actions. We do not decide the question at all; but as the question has not been decided in the Courts below we think it right that Second Appeals 748 and 805 should be allowed. The judgment and the decree of

1928.

THAKUR
RAGHU-
NANDAN
SAHAY
SINGH
v.
THAKUR
DRIPA
NATH
SAHAI
SINGH.

DAS, J.

(1) (1923-26) 30 Cal. W. N. 511.

(2) (1873-74) L. B. 1 I. A. 106.

1928.

THAKUR
RAGHU-
NANDAN
SAHAY
SINGH.
v.
THAKUR
DRIPIA
NATH
SAHAI
SINGH.

the lower Appellate Court so far as these appeals are concerned are set aside and the appeals remanded to that Court for disposal according to law. It will be open to the parties to argue any other point that may occur to them covered by the pleadings, issues and the evidence in the case; but neither of the parties will be entitled to adduce fresh evidence. Costs will abide the result and will be disposed of by the learned Judge in the Court below.

WORT, J.—I agree.

S. A. K.

Appeals remanded.

APPELLATE CRIMINAL.

Before Terrell, C.J., and Allanson, J.

SHEONARAIN SINGH

v.

KING-EMPEROR.*

1928.

July, 27.

Evidence Act, 1872, (Act I of 1872), section 24—retracted confession, admissibility of—statement whether can be used against a co-accused.

A retracted confession is admissible in evidence but should have no weight attached to it unless it is corroborated in material particulars or the tribunal comes to the conclusion that the statement as a whole is a truthful statement. In either of these cases the retracted statement must be given full weight and may be used against a co-accused.

The facts of the case material to this report are stated in the judgment of the Chief Justice.

H. L. Nandkeolyar, for the appellants.

C. M. Agarwala, Assistant Government Advocate, for the Crown.

*Criminal Appeal no. 95 of 1928, against a decision of Rai Bahadur J. Chatterji, Sessions Judge of Saran, dated the 25th February, 1928.