## APPEAL FROM ORIGINAL CIVIL.

*Before Mr. Justice Shadi Lal and Mr. Justice Martineau.*

1920

Feb. 28.

RUPA, &c. (PLAINTIFFS)—*Appellants,*

*versus*

SARDAR MIRZA, &c. (DEFENDANTS)—*Respondents*

Civil Appeal No. 2525 of 1916.

*Act XXI of* 1850—*succession by a Christian to the sons of a convert to Islam—Muhammadan Law—Pre-emption—Punjab Pre-emption Act, I of* 1913, *section* 15.

In 1914 defendants 1 to 3, the 3 Muhammadan sons of Mr. Stuart Skinner, *alias* Nawab Mirza, who was a convert to Islam, sold 6 villages to Mr. R. H. Skinner, defendant 4, a first cousin of theirs once removed. The plaintiffs as occupancy tenants in one of the villages sold brought the present suit for pre-emption in respect of that village, and the only question before the High Court was whether the vendee would, but for the sale, be entitled on the death of the vendors to inherit the land sold, he being a Christian, as in that case he would have a right of pre-emption superior to that of the plaintiffs under the Punjab Pre-emption Act, I of 1913, section 15.

*Held,* following *Ehagwant Singh* v. *Kallu* (1), that Act XXI of 1850 has the effect of abrogating the rule of Muhammadan Law by which a non-*Muslim* is excluded from succession to a *Muslim*, and that the vendee had consequently a right of succession to the vendors and therefore a right of pre-emption superior to that of the plaintiffs.

*Gulab* v. *Ishar Kaur* per *Stogdon J.* (2), *Mahna* v. *Chand* (3), and *Jiwan* v. *Harnam Das* (4), referred to.

*Kanshi Ram* v. *Jiwan* (5), *Desu* v. *Jowala* (6), *Badar Bakhsh* v. Mussammat *Sahib Jan* (7), *Khunni Lal* v. *Govind Krishna* (8), and *Mukerji* v. *Alfred* (9), distinguished.

*First appeal from the decree of E. R. Anderson Esquire, Subordinate Judge, 1st Class, Hissar, dated the 31st May* 1916, *dismissing the suit.*

GHULAM MOHY-UD-DIN, for Appellants.

GOKAL CHAND AND VAUGHAN, for Respondents.

(1) (1881) I. L. R. 11 All. 100.
(2) 63 P. R. 1895.
(3) 104 P. R. 1902.
(4) 77 P. W. R. 1907.
(5) 82 P. R. 1890.
(6) 13 P. R. 1885.
(7) 75 P. R. 1912.
(8) (1911) I. L. R. 33 All. 356, P. C.
(9) 86 P. R. 1909.

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RUPA
v.
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The judgment of the Court was delivered by—

MARTINEAU, J.—Defendants Nos. 1 to 3 are the sons of Mr Stuart Skinner, *alias* Nawab Mirza, who was a convert to Islam. In 1914 they sold six villages to Mr. R. H. Skinner, defendant No. 4. Plaintiffs who are occupancy tenants in one of the villages, namely, Dhangar, sue for pre-emption in respect of that village. Their suit has been dismissed on the ground that their right of pre-emption is inferior to that of the vendee, as he would, but for the sale, be entitled to inherit the property on the death of the vendors, being their first cousin once removed. The plaintiffs have appealed to this Court, and the only argument, advanced by Mr. Ghulam Mohy-ud-Din on their behalf is that as the vendors are Muhammadans, the vendee, being a Christian, is under the Muhammadan Law debarred from succeeding to their estate and has consequently no right of pre-emption. The Lower Court has held that the disability created by the Muhammadan Law is removed by Act XXI of 1850, and the question before us is whether this view is correct.

Act XXI of 1850, which is described as an Act for extending the principle of section 9, Regulation VII of 1832 of the Bengal Code, throughout the territories subject to the Government of the East India Company, runs as follows :—

"Whereas it is enacted by section 9, Regulation VII, 1832, of the Bengal Code that 'whenever in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindu and the other of the Muhammadan persuasion ; or where one more of the parties to the suit shall not be either of the Muhammadan or Hindu persuasions : the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled ; and whereas it will be beneficial to extend the principle of that enactment throughout the territories subject to the Government of the East India Company, it is enacted as follows :—

"So much of any law or usage now in force within the territories subject to the Government of the East India Company, as inflicts on any person forfeiture of

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rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of, any religion, or being deprived of caste, shall cease to be enforced as law in the Courts of the East India Company, and in the Courts established by Royal Charter within the said territories."

It is argued for the appellants that the Act only protects the convert from the loss of his right of inheritance in consequence of his renouncing his religion, and that it does not affect the provisions of the Muhammadan Law regarding the right of another person to inherit the property of the convert or convert's successors. It appears, however, that section 9 of Regulation VII of 1832 of the Bengal Code rendered the rule of Muhammadan Law by which a non-*Muslim* is debarred from inheriting the property of a *Muslim* inoperative in the Bengal Presidency. What we have to consider is whether the enactment of Act XXI of 1850 had the same effect throughout the territories subject to the Government of the East India Company.

We have not been referred to any case in which the point now in dispute arose, but a decision given in regard to the construction of Act XXI of 1850 in *Bhagwant Singh* v. *Kallu* (1) is against the appellant's contention. The case was one in which a Muhammadan whose father had renounced the Hindu religion claimed certain property as heir of his father's brother, and the question was whether Act XXI of 1850 applied, the plaintiff not being himself a convert, but being the son of a convert. It was held that the Act applied. Edge, C. J., remarked that as the Legislature in the preamble expressed the intention of the Act to be to extend the principle of Section 9 of Regulation VII of 1832 throughout the territories of the East India Company, one would expect that in the operative part of the Act, the principle of Section 9 of the Regulation would not be cut down or curtailed. He then considered whether the Act did in fact cut down or curtail that principle and came to the conclusion that it did not. He held that the operative portion of the Act related to different classes of

(1) (1888) I. L. R. 11 All. 100.

persons, the earlier portion protecting any person from forfeiture of right of property by reason of his or her renouncing their religion, or being excluded from caste, while the latter portion protected any person from having any right of inheritance affected by reason of *any* person having renounced his religion or having been excluded from caste, and he gave as his reason for this view that if the latter part of the section was restricted to the protection of the right of inheritance of the persons renouncing their religion or being excluded from caste their case was covered by the words of the early part of the section.

From the interpretation placed on Act XXI of 1850 in that judgment it would necessarily follow that the Act abrogated the rule of Muhammadan Law by which a non-*Muslim* is excluded from succession to a *Muslim*.

In *Kanshi Ram* v. *Jiwan* (1) a doubt was expressed regarding the correctness of the decision of the Allahabad High Court, but the point was not decided or discussed, and in *Gulab* v. *Ishar Kuur* (2 Stogdon, J., observed that he was inclined to think that the construction put upon the meaning of the Act by the Allahabad High Court was correct, although the matter was not one with which the Court was in that case particularly concerned. The Allahabad decision was, however, followed in *Manha* v. *Chand* (3), it being held that Act XXI of 1850 applied not only to the convert himself but to his heirs. In *Jiwan* v. *Harnam Das* (4) also the interpretation placed on the Act by the Allahabad High Court was accepted as correct. Counsel for the appellants has also cited *Desu* v. *Jowala* (5) and *Badar Bakhsh v.* Musst. *Sahib Jan* (6) and on the other side we have been referred to *Khunni Lal* v. *Gobind Krishna* (7) and *Mukerji v. Alfred* (8), but none of these rulings appear to afford any assistance in determining the question before us.

We are of opinion that the construction placed on Act XXI of 1850 in *Bhagwant Singh* v. *Kallu* (9) was

(1) 82 P. R. 1890.
(2) 68 P. R. 1895.
(3) 104 P. R. 1902.
(4) 77 P. W. R. 1907.
(5) 13 P. R. 1885.
(6) 75 P. R. 1912.
(7) (1911) I. L. R. 33 All. 356, P.C.
(8) 36 P. R. 1909.
(9) (1888) I. L. R. 11 All. 100.

a right construction. Following that decision we hold that the vendee has a right of succession to the vendors and that the suit for pre-emption has been rightly dismissed. We accordingly dismiss the appeal with costs.

*Appeal dismissed.*

## APPEAL FROM ORIGINAL CIVIL.

*Before Mr. Justice Shadi Lal and Mr. Justice Martineau.*

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*Feb.* 28

JAI KISHEN DAS AND OTHERS (PLAINTIFFS)—*Appellants*,

*v.*

ARYA PRITI NIDHI SABHA AND OTHERS (DEFENDANTS)—*Respondents.*

Civil Appeal No. 1947 of 1915.

*Vendor and Purchaser—sale of specific area of land—vendees evicted from part of this area—vendor's liability—Transfer of Property Act, IV of* 1882, *section* 55—*measure of damages—Indian Contract Act, IX of* 1872, *section* 73.

On the 16th September 1907 C. D. and his son M. B., the predecessors of defendants 3 to 8 sold to the plaintiffs 79 *kanals* and 4 *marlas* of land. The property comprised several plots of land which formed part of different *khasra* numbers specified in the sale-deed. The price paid by the vendees was Rs. 83,160 and was calculated, as expressly stated in the deed, at the rate of Rs. 1,050 per *kanal*. The plaintiffs asserted that they got possession of the 79 *kanals* and 4 *marlas*, but were subsequently evicted by the defendants 1 and 2 from an area measuring 4 *kanals* 4 *marlas*. It was found that defendants 1 and 2 were as a matter of fact the owners of the latter area.

*Held*, that as under the terms of the deed of conveyance the vendors sold 79 *kanals* and 4 *marlas* at so much per *kanal* to the plaintiffs, it was the duty of the vendors either to make good the deficiency or to pay damages for the loss caused to the vendees, having regard to the admission by the defendants that there was a guarantee of title and to the provisions of section 55 of the Transfer of Property Act.

*Held further*, that the measure of damages is the price of the land at the time of eviction, *vide* section 73 of the Indian Contract Act.

*Nagardas Saubhagyadas* v. *Ahmed Khan* (1), *Ranchhod Bhawan* v. *Manmohandas* (2), and *Nabinchandra Saha* v. *Krishna Barana* (3), followed.

(1) (1895) I.L.R. 21 Bom. 175. (2) (1907) I.L.R. 32 Bom. 165.
(3) (1911) I L.R. 38 Cal. 458.