

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Harrison.

MEHR KHAN AND SHAH DIN (DECREE-HOLDERS)—
Appellants,

versus

GHULAM RASUL AND OTHERS (JUDGMENT-
DEBTORS)—*Respondents.*

Civil Appeal No. 23 of 1919.

Pre-emption—decree—whether transferable.

On 17th June 1918, Mehr Khan, appellant, obtained a pre-emption decree on payment of Rs. 1,500 within one month. On 6th July 1918 Mehr Khan sold his rights in the decree to Shah Din, appellant, and on 8th July 1918 they both presented a joint application for execution and deposited Rs. 1,500, the fact of the sale being recited in the application. On 5th August 1918 Mehr Khan stated in Court that as he had sold his rights to Shah Din he wished possession under the decree to be given to him.

Held, following *Ramsahai v. Gaya* (1), that a decree for pre-emption is not capable of transfer, so as to enable the transferee to obtain possession of the pre-emptional property in execution, and that consequently Shah Din could not get possession under the decree in favour of Mehr Khan.

Lashkari Mal v. Ishar Singh (2), referred to.

Second appeal from the decree of Lieutenant-Colonel J. Frizelle, District Judge, Jullundur, dated the 13th November 1918, reversing that of Lala Munna Lal, Senior Subordinate Judge, Jullundur, dated the 5th August 1918.

M. OBEDULLA, for Appellants.

FAKIR CHAND, for Respondents.

The judgment of the Court was delivered by—

BROADWAY, J.—On the 17th June 1918, a pre-emption decree was passed in favour of Mehr Khan on payment of Rs. 1,500 within one month.

On 6th July 1918, Mehr Khan sold his rights in the decree to Shah Din and on 8th July 1918 they

(1) (1884) I. L. R. 7 All 107, 111.

(2) 94 P. R. 1902.

both presented a joint application for execution and deposited Rs. 1,500, the fact of the sale being recited in the application.

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On the 11th August 1918, Mehr Khan stated that as he has sold all his rights to Shah Din he wished possession under the decree to be given to him.

The original vendee objected on the ground that the transfer of the decree was void, but the executing Court disallowed the objection and substituted Shah Din for Mehr Khan. On appeal the District Judge held that the decree was not capable of being transferred relying on *Lashkari Mal v. Ishar Singh* (1). He also held that the decretal money had not been paid within time and therefore the decree was waste paper.

Mehr Khan and Shah Din now come to this Court in 2nd appeal.

The District Judge is clearly wrong in finding that the money was not paid in time and this has been admitted by Mr. Fakir Chand for the respondents.

On the question of whether a decree of this nature can be transferred, Mr. Obedulla contends that every decree is transferable, and that therefore it is immaterial whether such transfer is opposed to the principles on which the Pre-emption Act is based. As stated by him it appears to us that this proposition is very much too wide for there are obvious exceptions to the general rule that all decrees can be transferred, e.g., a decree for restitution of conjugal rights.

The question before us has been very fully considered in *Ramsahai v. Gaya* (2) and we find ourselves in full agreement with the principles therein enunciated and explained more especially on page 111, where it is said that a decree for pre-emption is not capable of transfer, so as to enable the transferee to obtain possession of the pre-emptional property in execution. This is what Shah Din has here attempted to achieve—for although the original application was joint, this must be read with Mehr Khan's subsequent

(1) 94 P. R. 1902.

(2) (1884) I L. R. 7 ALL 107, 111.

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qualifying statement to the effect that he wishes possession of the land to be given to Shah Din alone.

So far, therefore, as their finding is concerned, we uphold the order of the District Judge. It is, however, still open to Mehar Khan to apply personally for possession on the ground that the money has been paid within time and we do not in any way prejudge the result of that application, if made. We leave the parties to bear their own costs in this Court.

Appeal dismissed.

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Before Mr. Justice Martineau and Mr. Justice Abdul Qadir.

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MULA SINGH — (PLAINTIFF) — *Appellant*,

versus

AMIN CHAND AND GURAN DITTA —

(DEFENDANTS) — *Respondents*.

Civil Appeal No. 2659 of 1917.

Custom—Succession—whether land gifted to a stranger reverts to the line of the donor on death of donee without lineal heirs.

The plaintiff, a *Jat*, sued for redemption of land which was mortgaged by M. L., a *Khatri*, to the second defendant G. D. Plaintiff asserted that the land had been gifted by his father to M. L., and that as the latter died without leaving any lineal heirs, the land reverted to the line of the donor by Customary law.

Held, that the rule of reversion to the donor's line on death of the donee without lineal heirs under Customary law is not applicable where the donee is a stranger to the donor.

Nihala v. Rahmatullah per Lal Chand J. (1), and *Ahmad Hussain v. Rup Indar Singh* (2), followed.

Sila Ram v. Raja Ram (3), *Barkat Ali v. Jhandu* (4), distinguished.

Second appeal from the decree of A. H. Brasher, Esquire, District Judge, Amritsar, dated the 21st May 1917, affirming that of Lala Br j Lal, Munsif, 1st class,

(1) 137 P. R. 1908.

(3) 12 P. R. 1892 (F. B.).

(2) (1912) 14 Indian Cases 73.

(4) 127 P. R. 1907.