

APPELLATE CIVIL.

Before Mr. Justice Martineau and Mr. Justice Moti Sagar.

Mussammat ISHAR DEVI (DEFENDANT) Appellant,

versus

1924

March 26.

SHEO RAM AND OTHERS (PLAIN-
TIFFS), AND SOHAN SINGH } Respondents.
(VENDEE), AND UTTAM CHAND }
(VENDOR) (DEFENDANTS)

Civil Appeal No. 194 of 1921.

Pre-emption—whether a woman is entitled to pre-empt if she succeeds as an heir, though only to a life estate.

Held, that a woman is not precluded from maintaining a suit for pre-emption if she is by law entitled to inherit even though it may be to a life estate.

Mussammat Bhagi v. Muhammad (1), and *Mussammat Fateh Nishan v. Ahmad Shah* (2), followed.

Karam Singh v. Muhammad Ismail Khan (3), *Bhupal Singh v. Mohan Singh* (4), and *Phopi Ram v. Rukmin Kuar* (5), distinguished.

Second appeal from the decree of B. H. Bird, Esquire, District Judge, Rawalpindi, dated the 23rd October 1920, reversing that of Lala Chuni Lal, Senior Subordinate Judge, Rawalpindi, dated the 19th August 1920, and decreeing the plaintiffs' suit.

TEK CHAND and KISHAN CHAND, for Appellant.

M. S. BHAGAT, for Respondents.

The judgment of the Court was delivered by—

MOTI SAGAR J.—This appeal arises out of a suit for pre-emption brought in respect of a house situated in the town of Rawalpindi. The appellant before us

(1) 212 P. W. R. 1912.

(3) (1885) I. L. R. 7 All. 360.

(2) 46 P. R. 1914.

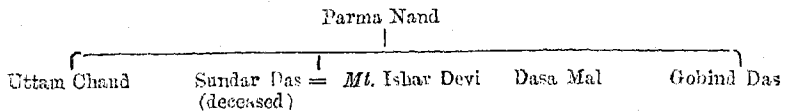
(4) (1897) I. L. R. 19 All. 324.

(5) (1897) I. L. R. 19 All. 327.

1924

Mussammat
ISHAR DEVI
v.
SHEO RAM.

is *Mussammat* Ishar Devi, the principal defendant to the suit. The plaintiffs are the respondents. The suit was dismissed by the trial Judge, but on appeal it was held by the learned District Judge that *Mussammat* Ishar Devi was not a co-sharer and that the plaintiffs were consequently entitled to a decree for pre-emption. The following pedigree-table will illustrate the facts:—



It appears that after the death of Sundar Das disputes arose between his brother Uttam Chand and his widow *Mussammat* Ishar Devi as to their right to succeed to the property left by his father Parma Nand. It was alleged by Uttam Chand that he and his brother Sundar Das constituted a joint Hindu family and that he was entitled by right of survivorship to succeed to the whole of the property. *Mussammat* Ishar Devi, on the other hand, contended that her husband was separate from his brother, and that she was, therefore, entitled to a life estate to the entire exclusion of Uttam Chand. On the 15th of March 1913 a compromise was effected between the parties under which it was agreed that, so far as the house in suit was concerned, both should remain in possession, and that none of them should alienate the same so long as *Mussammat* Ishar Devi was alive. It was further agreed that no alienations made by *Mussammat* Ishar Devi prior to the execution of that agreement should be objected to by Uttam Chand, nor should the former lay claim to any of the other properties left by her father-in-law Parma Nand. By this agreement *Mussammat* Ishar Devi's rights as a co-owner in the house were recognised by Uttam Chand,

and it was also agreed that the latter should succeed as full proprietor to that house after *Mussammat Ishar Devi* was dead. There was a further stipulation in the agreement to the effect that both should continue to live in the house as before on the first floor and that *Mussammat Ishar Devi* should also have the right to locate tenants on the ground floor, to eject them, and to realise rents from them during her lifetime.

On the 21st of January 1918 Uttam Chand executed a deed of sale in respect of the rights possessed by him in this house in favour of one Sohan Singh for a sum of Rs. 1,600. Shortly after the execution of the sale deed *Mussammat Ishar Devi* gave a notice to Sohan Singh that she was a co-sharer and was entitled to pre-empt. Sohan Singh admitted her superior right of pre-emption and transferred his rights under the sale to her on the 15th of January 1919 for Rs. 1,600. On the 18th of March 1920 the plaintiffs instituted this suit for pre-emption.

There are only two questions which arise for the determination of the Court in this appeal (1) whether *Mussammat Ishar Devi* was a co-sharer; and (2) whether a suit for pre-emption in respect of the sale of the rights conveyed by Uttam Chand in favour of Sohan Singh is maintainable. It is pointed out that under the deed of compromise Uttam Chand had only the right to reside in the house and to succeed to the same as an absolute owner after *Mussammat Ishar Devi* was dead. It is contended that the sale in respect of the reversionary rights, was illegal, and that the right of residence was not immovable property, the sale of which could be subject to a claim for pre-emption. We do not think it is necessary to decide the second question as we are clearly of opinion that the appeal

1924

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 Mussammat
 ISHAR DEVI
 v.
 SHEO RAM.

1924

MUSSAMMAT
ISHAR DEVI

v.

SHEO RAM.

must succeed on the first point. Uttam Chand had recognised *Mussammat Ishar Devi* as a co-owner in the house five years before the present suit was instituted, and no question can arise under the circumstances as to his *bonâ fides*. If Uttam Chand and his brother Sundar Das constituted a joint Hindu family (and the finding of the learned District Judge is that they did) the only person interested in disputing the claim of *Mussammat Ishar Devi* would be Uttam Chand himself, and if he chose to acknowledge her as a co-sharer we do not see how the plaintiffs, who are third parties, can challenge the validity of that acknowledgment and say that *Mussammat Ishar Devi* was not a co-sharer but was entitled only to maintenance. In the deed of compromise she is distinctly described as *malik* and *hissadar*, and there is nothing to show that the use of this house was given to her in lieu of maintenance only. Reliance has been placed by the learned counsel for the respondents in support of his contention on *Karam Singh v. Muhammad Ismail Khan* (1), *Bhupal Singh v. Mohan Singh* (2) and *Phopi Ram v. Rukmin Kuar* (3). The facts of those cases are, however, clearly distinguishable and none are in point. In none of these cases was there an agreement recognising the female as a co-owner, and it was found as a fact that she was in possession of the property, not as an heir to the last male holder, but in lieu of maintenance only. Now it has been repeatedly held that a woman is not precluded from maintaining a suit for pre-emption if she is by law entitled to inherit, even though it may be to a life estate, *Mussammat Bhagi v. Muhammad* (4) and *Mussammat Fateh Nishan v. Ahmad Shah* (5). We must accordingly

(1) (1885) I. L. R. 7 ALL. 800.

(3) (1897) I. L. R. 19 ALL. 327.

(2) (1897) I. L. R. 19 ALL. 324.

(4) 212 P. W. R. 1912.

(5) 46 P. R. 1914.

hold that *Mussammat* Ishar Devi was a co-sharer in the property and had a superior right to pre-empt.

It has been contended by Mr. M. S. Bhagat on behalf of the respondents that the sale in favour of *Mussammat* Ishar Devi by Sohan Singh was collusive and that no finding has been arrived at by the learned District Judge as to the genuineness of this transaction. There is no doubt that the learned District Judge has given no clear finding upon this point, but we do not think it is necessary to remand the case for this purpose as the evidence produced by the appellant already on the record clearly establishes a genuine sale in favour of *Mussammat* Ishar Devi, and there is nothing to rebut it.

We accordingly accept the appeal and dismiss the plaintiffs' suit with costs throughout.

A. N. C.

Appeal accepted.

1924

Mussammat
ISHAR DEVI

v.
SHEO RAM,