

APPELLATE CIVIL.

Before Addison A. C. J. and Din Mohammad J.

DHALLA (DEFENDANT) Appellant

versus

MST. FATEH BIBI AND ANOTHER
(PLAINTIFFS)
KHANUN AND OTHERS (DEFENDANTS) } Respondents.

1935
July 10.

Civil Appeal No. 2045 of 1934.

Punjab Pre-emption Act, I of 1913, section 15 (b) thirdly — whether applicable to wife and mother of issueless vendor.

H. and K. sold some land to D. and M. whereupon Mst. S., the wife of K., and Mst. F., the mother of H. and K., instituted a suit for possession of that land by pre-emption under section 15 (b) thirdly of the Punjab Pre-emption Act. The suit was resisted on the ground that the right of the mother and widow to temporary possession of the deceased holder's land was a mere development of her original right to maintenance and they were, therefore, not heirs within the meaning of the section.

Held (rejecting the contention) that as *H. and K.* had no issue *Mst. S.* and *Mst. F.* were entitled to a life interest in their estate and not merely to maintenance. They were, therefore, the persons who, but for such sale, would be entitled on the death of the vendors to inherit the land sold, within the meaning of section 15 (b) thirdly of the Punjab Pre-emption Act and were consequently entitled to the right of pre-emption.

Mussammatt Bhagi v. Muhammad (1), *Ahsan-Ullah v. Jowahir Lal* (2), and *Muhammad Khan v. Akbar Khan* (3), followed.

Mussammatt Fateh Nishan v. Ahmad Shah (4), and *Mussammatt Amir Nishan v. Kanshi Ram* (5), not followed.

(1) 205 P. L. R. 1912.

(3) 70 P. R. 1913.

(2) 87 P. R. 1896.

(4) 46 P. R. 1914.

(5) 1924 A. I. R. (Lah.) 382.

1935

DHALLA

v.

MST. FATEH
BIBI.

Second Appeal from the decree of K. S. Sheikh Abdul Aziz, Senior Subordinate Judge, with enhanced appellate power at Gujrat, dated the 20th July, 1934, modifying that of Lala Gian Chand, Bahl, Subordinate Judge, 2nd Class, at Mandi Baha-ud-Din, dated the 11th May, 1934, and awarding the plaintiffs possession of the whole of the land in dispute on payment of a certain sum.

M. L. PURI and S. L. PURI, for Appellant.

SHAMAIR CHAND and QABUL CHAND, for Respondents.

The judgment of the Court was delivered by—

ADDISON A. C. J.—Hussain and Khanun sold some land to Dhalla and Molu for Rs.1,000. *Mussammat Satto*, the wife of Khanun, and *Mussammat Fateh Bibi*, the mother of Hussain and Khanun, instituted a suit for possession of the land by pre-emption. The trial Court decreed the claim of *Mussammat Satto* for the half share of the land belonging to Khanun, her husband, on payment of Rs.500, and dismissed the suit in other respects. On appeal the Senior Subordinate Judge with enhanced appellate powers, decreed the plaintiffs' claim for pre-emption of the whole of the land on payment of the price paid, Rs.1,000. Against this decision Dhalla has preferred this second appeal.

The plaintiffs based their claim to pre-emption under section 15 (b) *thirdly*, namely, "in the persons in order of succession who but for such sale would be entitled on the death of the vendor to inherit the land or property sold." As neither Hussain nor Khanun have any issue, it is admitted that *Mussammat Satto* would at present succeed to the estate of her husband, Khanun, and *Mussammat Fateh Bibi*, mother of

Hussain, would succeed to his estate. It was contended before us, however, that it could not be said that these ladies are persons who, but for such sale, would be entitled on the death of the vendor to inherit the land. Reliance was placed principally upon *Mussammat Fateh Nishan v. Ahmad Shah* (1) which was followed in *Mussammat Amir Nishan v. Kanshi Ram* (2). It was held in *Mussammat Fateh Nishan v. Ahmad Shah* (1) that a mother, not being entitled to succeed under section 59 of the Punjab Tenancy Act to the occupancy rights sold, could not pre-empt such a sale. The sale in that case appears to have been of occupancy rights as well as of land. As regards land, it was said that the mother's right under Customary Law to temporary possession of her deceased son's landed property was similar to that of a widow and was a mere development of her original right to maintenance. Nothing is added in *Mussammat Amir Nishan v. Kanshi Ram* (2). It is, however, too late in the day to say that a widow or a mother hold the land merely in lieu of maintenance. That may, or may not, have been the origin of their right to get the land, but it has been long held that the widow or mother of a sonless proprietor is entitled to a life interest in her husband's estate and not merely to maintenance. It is in extremely few places in the Punjab and amongst very few tribes or families that a widow takes the estate merely in lieu of maintenance.

In the case before us, there is no doubt that this is the usual case of females succeeding to a life estate with power to burden and even to sell that estate for a necessary purpose, including the repayment of debts of her husband, etc. As pointed out by Chevis J. in

1935

DHALLA

v.

MST. FATEH
BIBI.

(1) 46 P. R. 1914.

(2) 1924 A. I. R. (Lah.) 333.

1935

—
DHALLA
v.
MST. FATEH
BIBI.

Mussammat Bhaqi v. Muhammad (1) "there are strong analogies between the estate of a widow under Customary Law and her estate under Hindu Law. Under both laws she holds for life for the purpose of maintenance with certain powers of disposition necessarily incident to her position and there seems to me no reason to hold that either under Hindu or Customary Law, a widow is not an heir of her husband."

In the case before Chevis J. the widow had a right to succeed collaterally (and amongst the present parties she has also that right); and he held that in such a case she had the right of pre-emption. This right was not confined to agnates alone who took a full estate.

As far back as 1896, Roe C. J. and Reid J. held in *Ahsan-Ullah v. Jowahir Lal* (2) that a widow, who holds land upon a life tenure, is entitled to exercise the right of pre-emption, and the Court has no concern with the motive which may induce a plaintiff to claim pre-emption or with the source from which funds necessary to enforce the claim may be drawn.

This authority was followed in *Muhammad Khan v. Akbar Khan* (3) by Reid C. J. and Rattigan J. That was a case where the vendor sold land to his wife and the collaterals sued to pre-empt; and it was held that the wife took precedence of her husband's reversioners, as there was no issue, and, therefore, the reversioners' suit for pre-emption must fail. Rattigan J. was also one of the Judges who decided *Mussammat Fateh Nishan v. Ahmad Shah* (4), and it is difficult to reconcile these two decisions. *Muhammad Khan v. Akbar Khan* (3) is specially important as it is a case

(1) 205 P. L. R. 1912.

(3) 70 P. R. 1913.

(2) 87 P. R. 1896.

(4) 46 P. R. 1914.

of a wife and not of a widow. There seems in fact to be no distinction between a wife, whose husband is alive and has no son and a widow, whose husband has died without issue, or between a mother, whose son is still alive, and a mother, who has succeeded, because her son is dead. Under section 15 (b) *thirdly* the right of pre-emption vests in order of succession in the persons who, but for such sale, would be entitled on the death of the vendor to inherit the land. At present the wife and mother are the persons entitled to succeed if the vendors were to die, and it must be taken that this is the meaning of this part of section 15.

It follows that the wife and mother were entitled to the decree given them to pre-empt the land, and the appeal must accordingly be dismissed. There will be no order as to costs.

P. S.

Appeal dismissed.

1935

DHALLA

v.

MST. FATEEH

BIBI.