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IN THE MATTER OF ACT XVIII OF 1869 AND OF THE UNCOVENANTED SERVICE BANK.

In this instance, no receipt appears to have been given to the Commissioner of Stamps, and the document in question is nothing more than the ordinary intimation, which the Bank gives to its customer, that a certain sum has been paid in by the Commissioner of Stamps to his credit.

If the instrument in question were a receipt within the meaning of art. 7, then in a case where it would be proper for the Bank to give notice of a particular payment to several different people, each one of the notices so given would have to be stamped as a receipt.

It seems to us perfectly clear, that this was never the intention of the Stamp Act; and for these reasons we are of opinion that the instrument in question is not chargeable with any stamp duty.

FULL BENCH.

Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice L. S. Jackson, Mr. Justice Markby, Mr. Justice Ainslie, and Mr. Justice Mitter.

LALLA NOWBUT LALL (PLAINTIFF) *v.* LALLA JEWAN LALL AND OTHERS (DEFENDANTS).*

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June 3.

Copurceners—Mahomedan Law—Right of Pre-emption.

There is no rule of Mahomedan law giving one coparcener any right of pre-emption where another coparcener is the purchaser.

Moheshee Lall v. *G. Christian* (1) followed; *Roshun Mahomed* v. *Mahomet Kuleen* (2) distinguished.

THIS was a suit to establish a right of pre-emption.

Lalla Nowbut Lall (the plaintiff), Jewan Lall and Tirput Lall (defendants Nos. 2 and 3), were each the owners of a 4-pie share in a certain mouza. On the 12th January 1875, Tirput Lall sold his share in the said mouza to one Rowshun Lall

* Special Appeal, No. 1783 of 1877, against the decree of E. Drummond, Esq., Judge of Zilla Sarun, dated the 31st of May 1877, modifying the decree of Moulvi Mahomed Natiq, Munsif of Sewan, dated the 27th May 1876.

(1) 6 W. R., 250. (2) 7 W. R., 150.

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(defendant No. 1), who, on the 19th February 1875, re-sold the same share to Jewan Lall.

The plaintiff, being unaware of the deed of sale from Tirput to Rowshun until the 7th March 1875, then brought a suit against Rowshun to establish his (the plaintiff's) right of pre-emption over the whole share, endeavouring to set aside the sale made by Tirput to Rowshun. Jewan intervened and contested his claim.

The Munsif, in accordance with the case of *Roshun Mahomed* v. *Mahomet Kuleen* (1), decided that the rights of Jewan Lall (the last purchaser) and the plaintiff were on an equal footing, and that, therefore, the plaintiff was entitled to recover a moiety of the share so sold on payment of half the consideration-money.

Both parties appealed to the District Judge, who, finding that the plaintiff was unaware until the 7th March 1875 of the sale to Rowshun, and that on that date Jewan was in possession, under the deed of sale to him of the share in dispute, held, that Jewan was a co-sharer with the plaintiff in the estate, and, therefore, the plaintiff could claim no right of pre-emption as against him, and on these grounds allowed the appeal preferred by Jewan Lall, and dismissed that of the plaintiff.

The plaintiff appealed to the High Court.

The case coming on before Mr. Justice Mitter was referred by him to the Full Bench with the following remarks :—

In this case, two objections have been taken to the judgment of the lower Appellate Court:—1*st*, that the District Judge has not tried the question, whether the defendant Jewan Lall is a co-sharer in the puttee of which the share in suit is a component part; and 2*ndly*, that, admitting that Jewan Lall is a co-sharer, the plaintiff is entitled to a partial decree.

The first objection does not appear to me to be tenable. It is admitted that the plaintiff has adduced no evidence upon that point: while, on the other hand, the defendant has adduced evidence to establish that he is a co-sharer in the puttee in question. Under these circumstances, the Courts below were right in treating the defendant as a co-sharer in the puttee of which

(1) 7 W. R., 150.

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the disputed share is a part. I am of opinion, therefore, that I ought not to yield to this objection.

As regards the next objection, it appears to me that the case cited by the Munsif is in conflict with that of *Moheshee Lall* v. *G. Christian* (1). There being this conflict in the decisions of this Court, I think it right to refer the case to a Full Bench. The question referred is, whether under Mahomedan law one coparcener has a right of pre-emption against another coparcener?

Baboo *Doorga Pershad* for the appellant.—In the Hedaya, Vol. III, Bk. 38, Ch. 1, it is said:—"When there is a plurality of persons entitled to the privilege of *shuffa*, the right of all is equal, and regard is paid to the extent of their several properties;" and again—"If some of the partners happen to be absent, the whole of the *shaffa* is to be decreed equally among those who are present. . . . . If, however, the *Kazee* should have decreed the whole of the *shaffa* to one who is present, and an absentee afterwards appear and claim his right, the *Kazee* must decree him the half; and so, likewise, if a third appear, he must decree him one-third of the shares respectively held by the other two, in order that thus an equality may be established among them." Baillie's Digest of Mahomedan Law, Ed. 1865, p. 494, shows that, if the owner of a share sells, his co-owners have a right of pre-emption. In *Baboo Moheshee Lall* v. *G. Christian* (1), it was decided that no right of pre-emption can exist as against a coparcener, but only as against strangers. But the point was not raised and discussed before the Court, it is merely the opinion of the Judges. [JACKSON, J.—Merely opinion!] Besides, the parties were Hindus and Christians. The case of *Teeka Dharee Singh* v. *Mohur Singh* (2) decides that the Mahomedan law of pre-emption was never intended to apply to a case in which the purchaser is not a stranger, but to one in which he is already either a shareholder or a neighbour. But that case conflicts with *Roshun Mahomed* v. *Mahomet Kuleen* (3).

(1) 6 W. R., 250. (2) 7 W. R., 260. (3) 7 W. R., 150.

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The definition of *shaffa* in the Hedaya, Vol. III, Bk. 38, Ch. 1, namely, "the becoming proprietor of lands sold for the price at which the purchaser has bought them though he be not assenting thereto," shows that it is not necessary that the purchaser should be a stranger. This appears also from *Hur Dyal Singh* v. *Heera Lall* (1), where it was held that if the purchaser be a neighbour, a coparcener can bring a suit. In Baillie's Digest, Ed. 1865, p. 476, it is said that "a *shureek* (or partner in the substance of a thing) is preferred to a *khuleet* (or partner in its rights, as of water or way), and a *khuleet* is preferred to a neighbour." So that among coparceners if there is some difference of degree, one may bring a suit against another; and such a suit was brought in *Moharaj Singh* v. *Lalla Bheechuk Lal* (2).

Baboo *Sreenath Banerjee* for the respondents was not called upon.

The judgment of the Full Bench was delivered by

GARTH, C. J.—We are of opinion that by the Mahomedan law one coparcener has no right of pre-emption as against another coparcener. There appears to be no reason, either upon principle or authority, why the right of *shaffa* should exist as between coparceners; and the rule as laid down in Hamilton's Hedaya, Vol. III, Bk. 38, Ch. 1, appears to have been misunderstood in this respect. That rule merely prescribes that any one partner (or coparcener) of a property has a right of *shaffa* as against a stranger, who purchases a share from his copartner, and does not mean, that the right exists as between copartners who may purchase shares from one another. The object of the rule, as explained in that chapter, and in Ch. 3, is to prevent the inconvenience which may result to families and communities from the introduction of a disagreeable stranger as a coparcener or near neighbour. But it is obvious that no such annoyance can result from a sale by one coparcener to another. The only result of such a sale would be to give the purchaser a larger share in the joint property than he

(1) 16 W. R., 107. (2) 3 W. R., 71.

had before, and perhaps larger than the other coparceners have. The only authorities in this Court, to which our attention has been called, are entirely in favor of this view.—[See *Moheshur Lall* v. *G. Christian* (1), and *Teeka Dharee Singh* v. *Mohur Singh* (2)]. The case of *Roshun Mahomed* v. *Mahomet Kuleen* (3), decided by Justices Kemp and Markby, appears, when the facts of it are properly understood, to have no application at all to the question before us. We find from the record of that case, that the true state of facts was this. One out of three coparceners had sold his share to a stranger. One of the other coparceners had exercised the right of *shaffa* as against the stranger, and obtained the sale of the share to himself; and the only question in the case was, whether the remaining coparcener had a right to participate in the purchase with the coparcener who had thus obtained it.

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We, therefore, decide the question referred to us in the negative, and dismiss the special appeal with costs.

Appeal dismissed.

ORIGINAL CIVIL.

Before Mr. Justice Pontifex.

HEERALALL RUKHIT *v.* RAM SURUN LOLL.

1879 *March* 27

Practice—Inspection of Documents—Sealing up immaterial parts.

Practice to be followed where a party producing documents wishes to have a certain portion of them sealed up.

IN this case a rule had been obtained by the defendant calling upon the plaintiff to show cause why the defendant should not be at liberty to seal up such pages and parts of the books and documents mentioned in the schedule to his affidavit of documents as did not relate to the matters in question in the cause. The defendant stated that he was a banker and commission

(1) 6 W. R., 250. (2) 7 W. R., 250. (3) *Ibid*, 150.