

(1880) 01 AHC CK 0004

Allahabad High Court

Case No: None

Lachho

APPELLANT

Vs

Maya Ram and Others

RESPONDENT

Date of Decision: Jan. 12, 1880

Citation: (1880) ILR (All) 631

Hon'ble Judges: Spankie, J; Oldfield, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Oldfield, J.

The property in this suit, comprising the share in Mouza Tholai belonging to Mahummad Ibrahim Khan, was sold by him to the defendants under a deed of sale dated 1st March 1878, and the plaintiff claims the same by right of pre-emption under the wajib-ul-arz. The lower Court decreed the claim, and one of the objections taken in appeal is that, under the pre-emption clause in the administration-paper on which the plaintiff relies as her ground of action, she is not entitled to recover the property. The clause is as follows:-- "Each sharer is by all means at liberty to transfer his right and share, but first of all the transfer should be effected by him in favour of his own brothers and nephews who may be sharers, and in case of their refusal in favour of the other owners of the thoke: if they refuse to make the purchase, the transfer may be effected in favour of any one." The plaintiff does not come under the first description of persons named who have a right of preemption, and it only remains to be seen if she is a sharer in the vendor's thoke. It is shown from the record-of-rights, and there is no dispute on this point, that there are three thokes in this mouza, namely, the thoke of Ibrahim Ali Khan, vendor, the thoke of Musammat Lachho, plaintiff, and the thoke of Musammat Bhawani. Each of these thokes comprised a certain amount of the land of the mouza, which has been divided and formed into separate thokes. Thus thoke Ibrahim Ali Khan comprises 316 bighas 5 biswas, that of Musammat Bhawani 99 bighas 17 biswas, and that of the plaintiff

316 bighas 4 biswas. Besides the lands thus divided into thokes, there are some lands in the mouza left undivided and held in common by the sharers of the different thokes in which they have an interest in proportion to their fractional shares, but these lands do not form part of the thokes, but were left undivided when those thokes were formed. That this is the constitution of the mouza is clearly shown by a reference to the record-of-rights, where the total of land divided and comprising each thoke is first given, and then is entered the common land, as something outside the thokes.

2. Now plaintiff is not a sharer in the vendor's thoke, that is, in the divided land held by him separately, but she is, in common with all the sharers of the different thokes, a sharer of the common lands left undivided, and it is contended that on this ground she has a right of pre-emption. But this contention fails; the thoke as already stated is not composed of the common lands but of those divided, and a sharer in the former will not from that circumstance become a sharer in a thoke. The plaintiff not having shown that she is a sharer in the vendor's thoke has no right of pre-emption under the clause in the administration-paper. We therefore decree the appeal, and reverse the decree of the lower Court, and dismiss the suit with all costs.