

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Munnu Lal and another v. Maulvi Saiyid
Muhammad Ismail and others, from the Court
of the Judicial Commissioner of Oudh;
delivered the 12th July 1904.*

Present at the Hearing :

LORD DAVEY.

LORD ROBERTSON.

SIR ARTHUR WILSON.

[*Delivered by Lord Robertson.*]

The sole question in this Appeal is whether the Respondent Maulvi Saiyid Muhammad Ismail, who may be more conveniently referred to as the Plaintiff, is entitled to pre-empt the village of Pahladpur, which had been sold to the Appellants and the fourth and fifth Respondents.

The village is in Oudh; and the Appeal is against a Judgment of the Judicial Commissioners of Oudh, who, reversing a Decree of the Subordinate Judge of Sitapur, have held that the Plaintiff has a right of pre-emption under the Oudh Laws Act, XVIII. of 1876. The facts are undisputed, and the question is entirely on the construction of the ninth Section of the Act. Under that Section, which admittedly applies to the sale of Pahladpur, the right of pre-emption is given to (among other persons) "co-sharers of the whole mahal" in order of their relationship to the vendor, and to "any member of the village-community."

There is no question about the relationship of the Plaintiff, and the only dispute is whether his

connection with the village is such as to give him the right of pre-emption. The material facts are that the Plaintiff is owner of a *chak* of 33 acres in Pahladpur; and, by the settlement under which he holds, he pays Rs. 40 *per annum* of revenue, this being payable through the lambardars of the village; but he does not reside in the village.

The Judgment of the Judicial Commissioner was that the Plaintiff is a co-sharer of the whole mahal. This opinion is concurred in by the Additional Judicial Commissioner, who further held that the Plaintiff is also a member of the village-community.

In their Lordships' judgment, it is clear that the Plaintiff is a co-sharer of the whole mahal, in the sense of the ninth Section of the Oudh Laws Act, 1876; and, this being so, it is unnecessary to discuss the question whether he is also a "member of the village-community."

The Oudh Land Revenue Act (No. XVII of 1876) is really decisive of the right of the Plaintiff to be deemed a co-sharer of the whole mahal. In the case of every mahal, according to Section 108, the entire mahal is to be charged with, and all the proprietors jointly and severally shall be responsible to Government for, the revenue for the time being assessed on the mahal. The term "proprietors," for the purposes of that chapter of the Act, includes all persons in possession for their own benefit, and the "chapter" is the whole of that relating to collection of the land revenue, and everything now to be referred to is in that chapter. The 112th Section provides that if the settlement of any land has been made with a lambardar, and if there be an arrear of revenue due in respect of such land, both the lambardar and the co-sharers of the mahal from which the arrear is due shall be deemed defaulters. By Section 121 it is provided that,

if an arrear of land revenue has become due in respect of the share of any member of a village-community, such community, or any member thereof, may tender payment of such arrear or may offer to pay such arrear by instalments. And in case of conflicting tenders or offers under this Section, the co-sharer who, in case the share were sold, would have a right of pre-emption under Section 9 of the Oudh Laws Act, shall be preferred.

This last enactment is important because it expressly identifies "the co-sharer" of the ninth Section of the Oudh Laws Act of the same year with every proprietor who, by the combined operation of Sections 108 and 112 of the Oudh Land Revenue Act, is liable for the revenue assessed on the whole mahal. If the various Sections of this "chapter" of that Act be read together it is plain that every "proprietor" liable for the revenue of the mahal is a "co-sharer." The Plaintiff is exactly in this position. He is certainly a "proprietor" in the sense of Section 108 of the Land Revenue Act; and the settlement of his land has been made (on the face of his title) with a *lambardar* in the sense of Section 112. He is, therefore, liable, just as much as every other proprietor in the mahal, for the whole arrear of the mahal in case of default. Their Lordships, accordingly, consider that the fact that the share of the Plaintiff in the mahal consists of a separate *chak* does not make him the less a co-sharer in the sense of this legislation, and the circumstance of his being non-resident does not seem to affect, or even bear upon, the language or the theory of the enactment.

Their Lordships will humbly advise His Majesty that the Appeal ought to be dismissed, and the Appellants will pay the costs of the Appeal.
