

(1922) 12 PAT CK 0005
In the Patna High Court
Case No : Appeal No. 82 of 1922

Dhirakshal Singh

APPELLANT

Vs

Triloki Prashad Singh and others

RESPONDENT

Date of Decision : 01-12-1922

Acts Referred:

Citation : (1922) 12 PAT CK 0005

Final Decision : Allowed

Judgement

Das, J.—As was pointed out in the case of Ram Golam Singh v. Nursingh Sahay (1875) 25 W.B. 43, the law of pre-emption was founded on the supposed necessities of a Muhammadan family arising out of their minute sub-division and inter-division of ancestral property. It is therefore purely a creature of the Muhammadan Law, and, as the exercise of the right is adverse to public interest, the Courts are not disposed to recognise this right beyond the strict limits of the Muhammadan law or beyond the decision of the Courts.

2. The learned Vakil on behalf of the Respondents has not been able to refer us to any case which has held that there is any right of pre-emption in mokurari land. He did rely upon the short notes of a case reported in the Calcutta Weekly Notes, but for obvious reasons it is impossible for us to rely upon notes.

3. On the other hand, it seems to me that the decision of this Court in the case of Sheikh Mohamed Jamil v. Khub Lal Raut (1920) 6 P.L.J. 740: 58 I.C. 534 is decisive on the point. It is true that the plaintiff in that case did not claim the right to pre-empt as a co-partner in the land sold; but the learned Judge discussed the basic principles upon which the law of pre-emption rests and he pointed out that, unless the proprietary possession is transferred, the right of pre-emption does not accrue. That case is an authority for the proposition that the milkiat or ownership of the property is sine qua non for the exercise of the right of pre-emption and that the pre-emptor must have the milkiat or ownership in the property on account of which he claims the right of pre-emption. This view accords with the view of Mr. Ameer Ali expressed in his well-known work on

Muhammdan law. "To entitle a person to claim the right of pre-emption," this is what the learned author says in his book, 4th Ed. Vol. I, p. 712, "the milhiat or proprietary interest in the property on which he bases his right must be in him but it is not necessary that he should be in actual possession of it." And then the learned author at p. 715 says as follows:-"As a corollary to the above principle it follows that no right of pre-emption arises in respect of property leased in perpetuity.

4. We are bound to follow the decision of our Court in the case to which I have referred. I would allow the appeal, set aside the order of the Court below and restore the decree of the Court of first instance.

5. The result is that the suit will stand dismissed with costs in all the Courts.

Adami, J.

6. I agree.