

(1945) 01 AHC CK 0023
In the Allahabad High Court

Ganda Singh and Others

APPELLANT

Vs

Kundan Singh and Others

RESPONDENT

Date of Decision : 29-01-1945

Acts Referred:

Citation : AIR 1945 All 205 : (1945) 15 AWR 93

Hon'ble Judges : Allsop, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Allsop, J.—This appeal arises out of a suit for pre-emption. When the suit was instituted, the plaintiff claimed a right to preempt on the ground that he was a cosharer in the same mahal with the vendee but was a nearer relation to the vendor, that is, was not removed by more than four degrees from the common ancestor of the vendor and himself. Before the decree could be passed, however, there was an imperfect partition of the mahal and the vendor and vendee were included in the same patti, that is, they became cosharers in the same subdivision of the mahal, whereas the plaintiff was a cosharer in another subdivision. The suit was consequently dismissed. Learned Counsel for the plaintiffs-appellants urges that the imperfect partition could not affect the rights of the parties, but no sub-division of a mahal can be created otherwise than by imperfect partition. If there is a perfect partition, then the original mahal is broken into two or more mahals. The only distinction between an imperfect and a perfect partition is that the cosharers in pattis created by an imperfect partition are liable to Government for the revenue of the other pattis, whereas in a perfect partition when separate mahals are created the cosharers of one mahal have no liability for payment of the revenue of the other mahals. The question whether a partition is perfect or imperfect affects only the liability to pay revenue. It does not affect the proprietary interest of various proprietors in the specific plots which have been allotted to them. There is no force in this appeal and I dismiss it with costs.