

(1921) 12 AHC CK 0001
In the Allahabad High Court

Jahangir Khan

APPELLANT

Vs

Syed Abdur Rahman and Musammat Amna Bibi

RESPONDENT

Date of Decision : 09-12-1921

Acts Referred:

Citation : 64 Ind. Cas. 943

Hon'ble Judges : Rafique, J;Piggott, J

Bench : Division Bench

Judgement

1. The only question at issue between the parties in the appeal before us is as to the construction of the words "sharik aziz qarib" and "sharik aziz baed". The vendor is a lady who was married first to one Inamul Haq. After the latter's death she married one Bashir ud-din. She executed a deed of sale in respect of some of her property in favour of one of her co-sharers. The suit out of which this appeal has arisen was brought by the uncle of her deceased husband for pre-emption, on the ground that under the terms of the wajib-ul-arz he had a preferential right to the vendee in spite of the latter being a co-sharer in the village. The Court of first instance dismissed the claim. On appeal the decree of the First Court was set aside. It is contended before us on behalf of the defendant vendee that the view taken by the lower Appellate Court of the words "sharik aziz qarib" and "sharik aziz baed" is erroneous. Under the Muhammadan Law death or divorce dissolves the tie between the husband and wife. On the happening of either event the relationship between the parties ceases. Much more would it be so in the case of a woman who after the death of her first husband marries into another family. On the facts in this case we are of opinion that the plaintiff pre-emptor cannot succeed on the ground that he is either a "sharik aziz qarib" or a "sharik aziz baed" of the vendor. The appeal is, therefore, allowed, the decree of the lower Appellate Court is set aside and that of the First Court restored with costs throughout to the vendee, including fees in this Court on the higher scale.