

(1917) 05 AHC CK 0011
In the Allahabad High Court

Musammat Zaibunnessa Bibi

APPELLANT

Vs

H.H. Maharaja Parbhu Narain Singh and Others

RESPONDENT

Date of Decision : 30-05-1917

Acts Referred:

Citation : 40 Ind. Cas. 345

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

Bench : Division Bench

Judgement

1. The facts of this case, so far as it is necessary to state them for the purposes of this appeal, are as follows:-- A mortgage was made in 1923 of certain property. One of the mortgagors was Sheikh Dalilullah, who owned a two-annas eight-pies share out of the sixteen annas mortgaged. The present plaintiff is one of the descendants of Dalilullah. The other descendants and heirs of Dalilullah are also parties to the suit, having been made pro forma defendants. Admittedly the integrity of the mortgage has been broken up and the mortgagee is now owner of thirteen annas four pies out of the sixteen annas. The plaintiff sought to redeem the whole of the two-annas eight-pies share which originally belonged to Dalilullah. The Court of First Instance gave her a decree. The Lower Appellate Court has held, on the strength of the rulings of this Court, that the plaintiff is only entitled to redeem her own share. That share has been ascertained. The plaintiff comes here in second appeal and she pleads that she is entitled to redeem the whole of two annas eight-pies share because the other heirs and descendants have expressed their willingness that she should do so. It is urged that the suit is in substance a suit by all the heirs to redeem the whole share. With this last plea we cannot agree. It would have been easy enough for the pro forma defendants, if they had so wished, to have turned themselves into plaintiffs and to have joined in the suit with the appellant. This they did not do. Our attention has been called to a decision of the Bombay High Court reported as *Sakharam Narayan v. Gopal Lahshuman* 10 B. 656 : Unrep. P.J.B.H.C. (1881) 551 : 5 Ind. Dec. 825 which is somewhat in favour of the appellant. The appellant, however, is met at the forefront of this appeal by a series of rulings of

this Court commencing from Kuray Mal v. Puran Mal 2 A. 565 : 4 Ind. Jur. 653 : 1 Ind. Dec. 928 and ending with Munshi v. Daulat 29 A. 262 : A.W.N. (1907) 49 : 4 A.L.J. 74. It is clear, on the face of these rulings, that the plaintiff is entitled only to redeem the share which she owns in the mortgaged property, and that share is much less than two annas eight pies. We can see no good reason to differ from a long series of decisions which have prevailed in this Court, merely because in the year 1886 another Court has held otherwise, especially when the rulings of this Court are based on a ruling of their Lordships of the Privy Council. In our opinion the decision of the Court below is quite correct. We, therefore, dismiss this appeal with costs, including fees on the higher scale.