

**(1897) 07 AHC CK 0004**  
**In the Allahabad High Court**

Nain Singh and Another

APPELLANT

Vs

Abdul Hai and Others

RESPONDENT

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**Date of Decision :** 31-07-1897

**Acts Referred:**

**Citation :** (1898) ILR (All) 92

**Hon'ble Judges :** John Edge, C.J.; Blair, J

**Bench :** Division Bench

**Final Decision :** Disposed Of

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## Judgement

John Edge, C.J. and Blair, J.—This was a suit for pre-emption. The share sold was in a mahal which had formed a part of a larger mahal. The co-sharers in the larger mahal had obtained a perfect partition under Act No. XIX of 1873. The plaintiff in this case is a co-sharer in the other mahal, in which the share sold is not, which formed part of the larger area. It appears that no separate wajib-ul-arz was prepared at the date of partition. The plaintiffs' contention is that the old wajib-ul-arz still applies, and that, inasmuch as he is a share-holder within the area to which that wajib-ul-arz applied, he is entitled to pre-emption, although he is not a share-holder in the particular mahal in which the share is which was sold. The rulings on this point are somewhat conflicting; but in one of the last rulings of this Court on this subject it was said:--" The result then is that the document upon which the respondents base their right, and which was the only evidence which they produced in support of that right, is a document prepared at a time when circumstances wholly different from those now in existence prevailed and which never contemplated the existing state of things." We have quoted from the judgment by Mr. Justice KNOX in Ghure v. Man Singh ILR 17 All 226, We believe that the decision in that case is in harmony with the view now entertained in this Court, The object with which share-holders in a mahal seek for partition is to sever their connection as co-sharers with other share-holders of the mahal. Some desire to separate their interest from other co-sharers because the latter do not pay their quota of the Government revenue regularly, thereby

bringing liability for their arrears upon all the co-sharers of the mahal. Sometimes, no doubt, partition is sought because co-sharers cannot get on comfortably with each other as co-sharers in the same mahal. In any view of the subject it would require very strong evidence to satisfy us that after share-holders in a mahal have applied for and obtained partition and consequent separation of their interest from other share-holders in the mahal they intended that the other co-sharers from whom they had separated their interest should be entitled to come in and pre-empt in the new mahal and become again their co-sharers. It is obvious to our minds that, on a true construction of Act No. XIX of 1873, it is the duty of the Collector or Assistant Collector on making a perfect partition to frame a separate record of rights for each of the new mahals. Unfortunately it is not always done, and hence these endless disputes between the share-holders in different mahals which formed parts of one original mahal. If Collectors or Assistant Collectors would read Section 107 of Act No. XIX of 1873 with the definition of "Mahal" as given in Section 3 of that Act, they would see that apparently it is the intention of the Legislature that each mahal should have a separate record of rights. A decision of two Judges of this Court in Angan Fateh Chand v. Bibi Hamid-un-nissa, Second Appeal No. 1249 of 1892, in which an order of remand was made on the 19th March 1891, and which was decided on the 18th February 1895, supports the opinion which we have expressed. We allow this appeal, and set aside the order of the Court below, and dismiss the appeal to that Court with costs, and restore and affirm the decree of the first Court. The appellant will have the costs of this appeal.