

(1921) 06 AHC CK 0005
In the Allahabad High Court

Ram Pal and Others

APPELLANT

Vs

Musammat Batashia

RESPONDENT

Date of Decision : 27-06-1921

Acts Referred:

Citation : AIR 1921 All 199 : 64 Ind. Cas. 191

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

Bench : Division Bench

Judgement

1. This and the connected Appeal No, 1045 arise out of two preemption suits brought by rival pre-emptors in respect to one and the same sale. The original vendor was Sheoraj Singh. Musammat Batasi, one of the pre-emptorg, is the widow of one Beni Madho. Beni Madho's great-grandfather and Sheoraj Singh's great grandfather were one and the same person. Musammat Batasi is a co-sharer in the village, Her husband having died, she has inherited his estate. The other pre-emptors Ram Pal, etc., are also co-sharers in the villages The custom under which both these seta of pre-emptors advance their alaima lays down two categories of co-sharers who may pre-empt. The first category is defined as ashkhas jaddi. The second category is shurakai deh. The Court of first instance held that both the sets of pre-emptorg came within the second class and stood on an equal footing. It, therefore, gave cash pre-emptor a conditional decree for half the property. On appeal the lower Appellate Court held that Musammat Batasi fell really within the first category and was a shakhs jaddi. He gave as a reason for it that the expression meant people of the same family and as Batasi was really a member of her husband's family, therefore, she and the vendor Sheoraj Singh were both of the same jad and she, therefore, same within the first category. The word jad, literally interpreted, means a "grandfather." Ashkhas ek jaddi would mean persons descended from a common ancestor. It has been admitted that Musammat Batasi personally is not of the same jad as her husband. If she had been, she would never have married him. She came from an entirely separate jad, and though by marrying she entered into the family to which he belonged, that did not enable her to say that she was descended from a

common ancestor with her husband. The lower Court, in our opinion, has placed a wrong meaning on the words ashkhas jaddi. The respondent Musammat Batasi, therefore, in our opinion, same within the second category in which also the appellants admittedly are. The plea that she represents her husband s estate in this case has no force. She is suing in her own right as a co-sharer.

2. The result, therefore, is that the appeals must be allowed. The decrees of the Court below are set aside and the decrees of the Court of first instance restored.

3. The appellants will have their costs in this and the lower Appellate Courts. The costs in this Court will include fees on the higher scale.