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**(1921) 08 AHC CK 0021**  
**In the Allahabad High Court**

Syeduddin

APPELLANT

Vs

Latifunnissa and Musammat Shafiunnissa

RESPONDENT

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**Date of Decision :** 04-08-1921

**Acts Referred:**

**Citation :** AIR 1922 All 391 : 64 Ind. Cas. 456

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

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

1. Second Appeals Nos. 696 and 697 are two appeals arising out of a pre-emption suit. Admittedly the rules of the Muhammadan Law apply to the case. The property in question consisted of Zemindari shares in 5 khatahs in one mahal, The 5 khatahs are Nos. 17, 25, 49, 29 and 48. The plaintiff, the vendee and the vendor at the date of sale were all so sharers in the mahal. The plaintiff, however, owned shares in khatahs Nos. 17, 25 and 49. The vendee had no shares in any of the 5 khatahs. The plaintiff claimed that he was entitled as being a co-sharer in khatahs Nos. 17, 25 and 49 to a decree for pre-emption in respect to the whole of the shares sold in those 3 khatahs.

2. In regard to Nos. 29 and 48 he claimed that he stood on the same footing as the vendee and, therefore, under the law as administered in these Provinces he was entitled to a half of the property sold in these two khatahs, The Court of first instance gave the plaintiff a decree for half of the property sold in each of the 5 khatahs, relying on the ruling in *Jadu Lal Bahu v. Janki Koer* 15 Ind. Cas. 659 : 9 A.L.J. 525 : 16 C.W.N. 553 : 11 M.L.T 361 : (1912) M.W.N 486 : 15 Cri L.J. 483 : 14 B. L.R. 436 : 23 M.L.J. 28 : 39 C. 915 : 39 I.A. 101 (P.C.), Both parties appealed to the lower Appellate Court. The plaintiff claimed that he was entitled to the whole of the shares sold in khatahs Nos. 17, 25 and 49. The defendant appealed in respect to all the property sold. The lower Appellate Court dismissed the defendant's appeal completely, but allowed the plaintiff's appeal and gave the plaintiff a decree for the whole of the shares sold in khatahs Nos. 17, 25 and

49 and upheld the First Court's decree in respect to the half shares in Nos. 29 and 48. The defendant has come here on second appeal and reliance is placed on the ruling of the Privy Council in the above-mentioned case, and it is urged before US that the plaintiff and the vendee are both co-sharers in the mahal, they, therefore, stand upon the same footing and that the utmost that the plaintiff is entitled to recover is a half share of the property sold in each of the khatahs. The learned Vakil for the appellant has to admit that in face of the rulings reported as *Amir Hasan v. Rahim Bakhsh* 19 A. 66 : A.W.N. (1897) 118 : 9 IC 309 and *Abdullah v. Amanat ullah* 21 A. 292 : A.W.N. (1899) 82 : 9 IC 895 the plaintiff is entitled as a pre-emptor if he stands on the same footing with the defendant vendee, to recover a half share in the properties sold. On behalf of the respondents it has to be also admitted that there is no difference really between the circumstances of the case now before us and those of *Jadu Lal Sahu v. Janki Koer* 15 Ind. Cas. 659 : 9 A.L.J. 525 : 16 C.W.N. 553 : 11 M.L.T 361 : (1912) M.W.N 486 : 15 Cri L.J. 483 : 14 B. L.R. 436 : 23 M.L.J. 28 : 39 C. 915 : 39 I.A. 101. In that case it was laid down by their Lordships of the Privy Council "that the claim to co-parcenary on which the plaintiff's right of pre-emption was based, arose out of the fact that the vendor and pre-emptor were jointly liable to the payment of the Government revenue assessed on the villages comprised in the mahal, and that this joint liability does constitute the co-parcenary contemplated by the Muhammadan Law."

3. Towards the end of the paragraph on page 533 Page of 9 A.L.J.--[Ed.] of the report it is remarked as follows:

A mahal is a unit of property; it may consist of one village or of several villages: it may be owned by one or several proprietors who may have an interest in all or some of the villages comprised in the estate. Their joint liability for the Government revenue arises from the fact that they own undivided interests in the property; and that joint liability does not cease in the case of any co-sharer until his particular share has been partitioned by the Revenue Authorities, when the share so partitioned becomes a separate unit of property.

4. We must assume that this is a correct proposition of the law and if it is, then all the co-sharers in a mahal, though they may not own rights in various portions of the mahal, stand upon the same footing so far as the right of pre-emption under Muhammadan Law is concerned. We would like to point out that there are many cases of imperfect partition where the interests of the co-sharers in the mahal are divided completely from one another and that all that remains joint, is the liability for the Government Revenue. Still it is this liability which has been laid down by the Privy Council as a test of the co-parcenary contemplated by the Muhammadan Law. No authority has been cited before us which lays down that the Muhammadan Law recognizes degrees of nearness in the same class of pre-emptors. For instance all who come within the definition of shafi shareek stand on the same footing. In this view the plaintiff and the vendee are both shafi shareek and are entitled to share the property which has been sold.

5. The result is that Second Appeal No. 696 of 1920 will stand decreed. The decree of the Court below will be set aside and that of the Court of first instance re-instated. Second Appeal No. 697 of 1920 will stand dismissed, We think that in view of the circumstances the parties should pay their own costs in this Court and in the lower Appellate Court. The actual result of the two appeals is that the decree of the Court of first instance is restored in its entirety.