

(1917) 05 AHC CK 0010
In the Allahabad High Court

Zaib-un-nissa Bibi

APPELLANT

Vs

Maharaja Parbhu Narain Singh and Others

RESPONDENT

Date of Decision : 30-05-1917

Acts Referred:

Citation : (1917) ILR (All) 618

Hon'ble Judges : Tudball, J; Muhammad Rafiq, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Tudball and Muhammad Rafiq, JJ.

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 1823 of certain property. One of the mortgagors was Sheikh Dalil-ullah who owned a 2 anna 8 pie share out of the 16 annas mortgaged. The present plaintiff is one of the descendants of Dalil-ullah. The other descendants and heirs of Dalil-ullah 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 Re. 0-13-4 out of the 16 annas. The plaintiff sought to redeem the whole of the Re. 0-2-8 share which originally belonged to Dalil-ullah. 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 the Re. 0-2-8 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 appellants. This they did not do. Our attention has been called to a decision of the Bombay High Court reported in Indian Law Reports, 10 Bombay, page 656, 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 ILR All. 565 and ending with ILR All 262. 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 Re. 0-2-8. We can see no good reason to differ from a long series of decisions which have prevailed in this Court, 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.