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Musammat Parbati Vs. Bhawani Singh and ors.

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Court : Allahabad

Decided On : Nov-26-1909

Reported in : 4Ind.Cas.419

Judge : Tudball, J.

Appellant : Musammat Parbati

Respondent : Bhawani Singh and ors.

Judgement :

Tudball, J.

1. This appeal arises out of a suit to enforce a right of pre-emption in respect to a certain zamindari share. The plaintiff is one Musammat Parbati, widow of a deceased son of one Kirpa Ram. Kirpa Ram and his brother Khiali Ram were members of a joint Hindu family and the property which now stands in the name of the plaintiff is part of the ancestral property of Kirpa Ram and Khiali Ram. Moreover, there has been no partition in the family. The plaintiff Musammat Parbati still lives jointly with Khiali Ram. The share in the village which now stands in her name has not been conveyed to her in any legal manner or by any document. This suit for pre-emption was instituted in her name by Khiali Ram himself acting as her general attorney. It was dismissed in the Court of first instance on the ground that the wajib-ul-arz on which reliance was placed to prove the alleged custom proved on the contrary a contract and not a custom and the period of settlement having come to an end, the contract was no longer binding. On appeal the lower appellate Court held that the wajib-ul-arz clearly denoted a custom under which co-sharers were entitled to preempt in certain order. But the lower appellate Court held that the plaintiff was not a co-sharer at all. This decision was based upon evidence produced by the plaintiff herself. It is attacked on second-appeal (1) on the ground that she inherited the property under the Will of her father-in-law, (2) on the ground that Khiali Ram has stated on oath that she was entitled to the share recorded in her name, and as no body else was entitled to object to her right of ownership, she was entitled to pre-empt the property now in suit. The will of her deceased father-in-law was not mentioned in either of the Court below, nor has it been proved, nor is it in evidence before me. As to the statement of Khiali Ram, it carries no weight in the present case. It has clearly been made as a despairing effort to prevent the suit being lost. On the face of the plaintiff's evidence it is clear that the share which now stands recorded in her name is the property of the joint family consisting of Khiali Ram and his co-parceners. The plaintiff is a Hindu widow of that family. As a matter of fact she is not a co-sharer. The were recording of her name in the khewat does not entitle her to pre-empt the wajib-ul-arz clearly gives a right to a person who is a hissadar, that is, an actual co-sharer in the village. In no sense of the word is the plaintiff a co-sharer. The utmost that can be said in her favour is that

her name is recorded. That alone gives her no right of pre-emption. In my opinion the decision of the lower Court is perfectly correct. I, therefore, dismiss this appeal with costs.

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