

IN THE HIGH COURT OF LAHORE

Decided On: 06.11.1923

Appellants: **Gobind Ram and Ors.**
Vs.
Respondent: **Ali Muhammad and Ors.**

JUDGMENT

1. The parties to the suit out of which the present second appeal arises are proprietors in the village of Sapra in Chiniot Tahsil of the Jhang District. The plaintiffs-respondents are the descendants of the original founder of the village and they are admittedly co-sharers in the shamilat deh. The land in the possession of the defendants appellants was acquired by them or their predecessors either by gift or purchase or as a result of the lapse of mortgages.

2. The plaintiff sued for a declaration that they were the sole owners of the shamilat deh to the exclusion of the defendant. The lower Appellate Court gave them a declaratory decree to the effect that alienations of proprietary land in the Sapra village subsequent to 1856 should not ordinarily be held to carry with them the rights of shamilat of the village.

3. In our opinion this decision is correct. The principle has been well established by various rulings of this Court, including those reported as Ram Das v. Amir Shah (1902) 34 P.L.R. 1902 and Saleh v. Bakhtawar (1916) 3 P.R. 1917, that the rights of proprietors in the shamilat of the village are not a mere accessory to the land separately held by them and that the onus lies on the purchaser of the proprietary land to show that the sale to him included also a share of the shamitat. The shamilat lands of villages in the Jhang District were clearly defined at the Settlement of 1856 and it is on that account that the learned District Judge has made a distinction between those acquired prior and subsequent to that date.

4. The case reported in Ahmad v. Ahmad (1910) 75 P.W.R. 1910, also supports the view taken by the learned District Judge. In the case reported as Shahamad v. Ibrahim (1915) 57 P.R. 1915, the Punjab Weekly Reporter case is distinguished. It does not, in bur opinion, assist the appellants in any way.

5. In the case reported as Duni Chand v. Muhammad Bakhsh (1907) 8 P.L.R. 190, the defendants acquired their rights in the village prior to the time when Shamilat rights were defined. Therefore, that case also is of no assistance to the defendants-appellants.

6. In our opinion the decision of the learned District Judge is perfectly correct and we dismiss the appeal with costs.

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