

**(1920) 01 AHC CK 0004****Allahabad High Court****Case No:** None

Izzat Husain Khan

APPELLANT

Vs

Ram Chander and Others

RESPONDENT

**Date of Decision:** Jan. 5, 1920**Citation:** 59 Ind. Cas. 366**Hon'ble Judges:** Tudball, J; Rafique, J**Bench:** Division Bench**Judgement**

1. This appeal must succeed. It relates only to the property situates in mauza Bhojpur, a piece of haqiat mutafarriqa." The Court of first instance held that the custom in the village was one pertaining to the khalsa lands which constitute the 20 biswa mahal. It, therefore, held that there was no proof of any custom in reference to the "haqiat mutofarriqa." It accordingly dismissed the claim so far as it related to the property now in dispute in this appeal. The lower Appellate Court was of opinion., that, because this land had once formed part of the 20-biswa mahal, the custom ought to be deemed to apply to it as well. With this we and it impossible to agree. The plaintiff came into Court proving a custom among the so sharers of the 20 biswa mahal in respect to their shares in that mahal. There is no evidence of the existence of a custom among the co-sharers of the "haqiat mutafarriqa." The custom is not attached to the land. It is true that the land in dispute may once have been a part of the 20 biswa mahal, but circumstances have altered and it no longer is part and parcel of that mahal. The result is that it is no longer within the custom as set out in the wajib-ul-arz, and the claim was rightly dismissed by the Court of first instance. We, therefore," allow the appeal, set aside the decree of the Court below and restore that of the Court of first instance. The appellant will have his costs in this Court and in the lower Appellate Court.