

(1880) 05 AHC CK 0002

Allahabad High Court

Case No: None

Ganga and Another

APPELLANT

Vs

Isri Singh

RESPONDENT

Date of Decision: May 5, 1880

Citation: (1880) ILR (All) 876

Hon'ble Judges: Robert Stuart, C.J; Straight, J; Spankie, J; Pearson, J; Oldfield, J

Bench: Full Bench

Judgement

Robert Stuart, C.J.

After hearing the argument addressed to us in Full Bench, I remain substantially of the opinion expressed in my referring order; but I desire now to add one or two observations. In the first place I have to express my regret that my statement of the case of Chadami Lal v. Muhammad Bakhsh ILR 1 All. 563 is not quite accurate and scarcely does justice to my colleagues, Pearson, J., and Oldfield, J., who decided it. I state that by their judgment "it appears to have been decided that the wajib-ul-arz is a special agreement and that it excludes evidence of custom," adding that "this perhaps, as a general proposition, is a doubtful ruling," and so it undoubtedly would be as a general proposition. But again looking into the report of the case I find that the suit was for pre-emption founded on a special agreement which the wajib-ul-arz in that case was considered to be, " and not," as the judgment states, "on any well-established custom apart from the contract made under the administration-paper." So that the case really lays down no general principle of law excepting perhaps this, that a wajib-ul-arz may be a contract or agreement complete in itself under which evidence of any contradictory custom would be excluded.

2. I have next to remark that, as Section 91 of the Revenue Act XIX of 1873 was suggested at the hearing as supplying an answer to the first question in the order of reference, that section has not in my opinion such effect. It simply provides that "all entries in the record so made and attested shall be presumed to be true until the contrary is proved." But it does not necessarily follow that such entries are prima

facie binding on the co-sharers. On the contrary, I believe that, according to the practice recognized by the Revenue Department of these Provinces, entries in the record-of-rights are not binding on those who have attested and signed it, but they may be contested and the parties allowed to prove that the record is wrong, unless the entries have been, made by order of the Settlement Officer when they would appear to be considered *prima facie* binding.

3. In regard to the second question in the order of reference, I have been struck by a remark made by my colleague Mr. Justice Spankie that, if the *wajib-ul-arz* is to be looked upon as a contract, it might be required to be stamped, and he would prefer that entries of such a nature should rather be regarded as evidence of the agreement. I gladly adopt this view which, besides stating the law in very appropriate terms, has the merit of avoiding any infringement of the Stamp Act. With these modifications, I would answer both questions put to the Full Bench in the referring order in the affirmative, leaving any further expression of my views till the case which gave rise in the reference comes back to my colleague, Straight, J., and myself as the referring Division Bench.

Oldfield, J.

4. The *wajib-ul-arz* or administration-paper forms part of the record-of-rights of a mahal which is prepared under the provisions of Section 61 and following sections of the Land-Revenue Act, and with reference to the provisions of Section 65 and the rules framed u/s 257, it is a public record, *inter alia*, of customs and rights affecting the shareholders of the mahal and including such as relate to pre-emption. The right of pre-emption may be founded on the Muhammadan law, or, as is more generally the case, where it affects Hindus, on long established custom having the force of law, or on special contract between the shareholders, and the *wajib-ul-arz* may record the practice of pre-emption as based on any of these grounds, and the entry may be either evidence of custom or of the contract. The law (Section 90, Land Revenue Act) prescribes that the record-of-rights shall be drawn up in a form and attested in a manner to be prescribed by the Board of Revenue, and s. 91 of the Act directs that "all entries in the record so made and attested shall be presumed to be true till the contrary is proved." Such being the legal presumption in favour of the truth of the entries in the record-of-rights, and considering the public character of the document and the publicity with which it is prepared, there can be no doubt, when it has been prepared and attested in the term and manner prescribed by the Board of Revenue that the *wajib-ul-arz* becomes *prima facie* evidence of the existence of any custom of pre-emption which it records, open to be rebutted by any one disputing the custom; and when it records a right of pre-emption by contract between the shareholders, it is evidence of a contract binding all the parties to it and their representatives, and there will be a presumption that all the shareholders assented to the making of the entry, and in consequence were assenting parties to the contract of which it is evidence, and it will be for those repudiating the contract

to rebut this presumption.

5. A case,--Chadami Lal v. Muhammad Bakhsh ILR All. 563, --Which was decided by Mr. Justice Pearson and me, has been noticed in the order of reference of the learned Chief Justice, and I wish to add, with reference to some remarks on the judgment in that case, that I do not find that we ruled "that the wajib-ul-arz is a special agreement and that it excludes evidence of custom." All we said was that the plaintiff in the case before us had brought his claim on the contract in the recent administration-paper and not on any well established custom, and we refused to allow him to shift the ground of his action, but we expressly observed that an entry of the right of pre-emption in a former administration-paper might be evidence towards proving a custom though it does not necessarily establish it.

Pearson, J.

6. I concur in the remarks of my learned colleague Mr. Justice Oldfield on the questions referred to the Full Bench.

Spankie, J.

7. In reply to the first question I would say that Section 90 of Act XIX of 1873 authorises the Board of Revenue from time to time to prescribe the form in which the record to be made under the provisions of Chapter III of the Act shall be drawn up and the manner in which it shall be attested. Accordingly, orders have been drawn out by the Board, and the khewat and the wajib-ul-arz, which form a portion of the record-of-rights, are to be attested by the Settlement or Assistant Settlement Officer in the presence of all the lambardars of each mahal or their authorised agents, and as far as possible of all other persons whom they may concern and shall be signed by the Settlement Officer or Assistant Settlement Officer and by all the lambardars and the patwari. When a document has been so attested, all the entries in the record shall be presumed to be true until the contrary is proved, as provided by Section 91. Such a record is prima facie binding on all the co-sharers, and cannot be repudiated by any one succeeding to or acquiring a share except as permitted by Section 91.

8. As to the second question, I would say that the wajib-ul-arz is a record of those arrangements made by the Settlement Officer in accordance with the provisions of Section 65, Clause (e) of which includes in the record so formed any other matters which the Settlement Officer may be directed to record under rules framed u/s 257 of the Act, and the documents, must be attested and drawn up as provided by Section 90; amongst other matters the Settlement Officer is required to record the custom relating to pre-emption in the village. The wajib-ul-arz then is a record of village-customs. But when it relates to pre-emption, it may record the custom existing in the mahal or the agreement which the shareholders have already made amongst themselves. I do not look upon it as the contract itself, for as such it might require to be stamped, but when it recites the fact of the existence of any

agreement amongst the shareholders as to the condition under which pre-emption might be claimed, I would regard the entry as evidence of that agreement. In either case, the custom, if it exists, is binding upon the shareholders, or they are bound by an agreement which can be proved, and the nature of which has been recorded in the administration-paper for the guidance and information of all the shareholders, a document in which the truth of the entries is to be presumed until the contrary be shown.

Straight, J.

9. I agree with my honourable colleague, Mr. Justice Spankie.