

Muhammad Mahbub Ali Khan Vs Raghubar Dayal and Others

Court: Allahabad High Court

Date of Decision: July 28, 1915

Citation: AIR 1915 All 423 : (1916) ILR (All) 27 : 30 Ind. Cas. 947

Hon'ble Judges: Henry Richards, C.J; Tudball, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Henry Richards, C.J. and Tudball, J.

This appeal arises out of a suit for pre-emption, The court below has dismissed the claim. The

plaintiff adduced, as evidence of the existence of the custom, an extract from the wajib-ul-arz of 1865. The court below has considered the history

of the village. It has also considered the terms of wajib-ul-arz. The language used in the wajib-ul-arz coupled with the history of the village strongly

suggests that what was recorded in the wajib-ul-arz of 1865 was not an existing custom but an arrangement between the co-sharers. We are not

prepared to dissent from the view taken by the court below that a custom of pre-emption has not been proved in the present case. There is,

however, another matter which we think is fatal to the plaintiffs claim. Since the wajib-ul-arz of 1865 perfect partition has taken place in the village

and the plaintiff was not at the time of the sale a co-sharer with the vendor. His property was situate in a separate mahal. There was no joint and

several responsibility between the plaintiff and the vendors for the payment of the Government revenue assessed upon their respective properties.

Neither had any voice in the management or share in the enjoyment of the other"s zamindari. It lay upon the plaintiff in the present case not merely

to prove the existence of some custom of pre-emption, he had to prove the existence of a custom under which he himself had a right, that is to

say, he had to prove, the existence of a custom which gave a right to a person who was not a co-sharer with the vendor. The great importance in

pre-emption cases of the co-parcenary relationship has been pointed out in the case of Dalganjan Singh v. Kalika Singh ILR (1899) All. 1 and also

in the case of Ganga Singh v. Chedi Lal ILR (1911) All. 605. The only evidence of the existence of a custom in the present case was the extract

from the wajib-ul-arz to which we have referred. But that record clearly relates to a right between co-sharers, because at that date partition had

not taken place and all the proprietors in the village were co-sharers with each other. We are not deciding that the custom (assuming that there was

one) ceased as the result of partition. The custom continues, but the plaintiff not being a co-sharer with the vendor is no longer within the custom.

We think that the plaintiff gave no evidence of the existence of a custom which gave a person who was not a co-sharer with the vendor a right of

pre-emption. We dismiss the appeal with costs.