(1888) 06 AHC CK 0002

Allahabad High Court

Case No: None

Jhandu Mal		APPELLANT
	Vs	
Gurdayal Mal		RESPONDENT

Date of Decision: June 30, 1888

Citation: (1888) ILR (All) 585

Hon'ble Judges: Tyrrell, J; John Edge, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Edge, C.J. and Tyrrell, J.

This was a suit for pre-emption. The plaintiff alleges generally in the plaint that by reason of his cp-sharership he was entitled to a pre-emptive right with regard to the property, and that he had made the necessary demand. By the written statement the defendant denied that there was any custom. The custom has been found on the evidence, some of which was oral, namely, that of the inhabitants of the town. Other evidence which was put in consisted of sale-deeds relating to sales in which the right was enforced, but without the assistance of the Courts of law. Another class of evidence consisted of decrees in suits relating to property in the town, by which the right of pre-emption was recognised and enforced. For the defendants, witnesses were called who gave a general denial of the existence of the custom. Those witnesses could not mention any instance in which a claim of pre emption had been successfully resisted.

2. It is said that the decree to which I referred were not admissible in evidence. It appears to me that they were the best evidence of instances in which the right was recognised. They are to my mind the most satisfactory evidence, because they are the result of decisions in cases in which one party alleged the custom and the other denied it. The Courts having heard the evidence decided in favour of the custom. As those decrees were not in suits between these parties, they were not conclusive, but they were excellent evidence to show that the right was asserted in the town by

other persons and was recognised by the lawfully constituted legal tribunals. We have been referred to the Full Bench judgment of the Calcutta High Court in the case of Gujju hall v. Fateh hall ILR 6 Cal 171. That case does not bear on the question here. There the question between the parties was as to the right to recover possession of particular property, and the judgment that was sought to be made use of was a judgment in a suit to which the plaintiff was not a party. That the judgments such as we have here are admissible in evidence of the local custom was established by the case of Koodoottoollah v. Mohinee Mohun Shaha 5 RCr 290. That was a pre-emption suit, and the custom there sought to be established was a custom of preemption. In the case of Sheo Churn v. Goodur 1868 NWPHC 138 the learned Judges of this Court considered that instances of an enforcement of a custom were good evidence. The most satisfactory evidence of an enforcement of a custom is a final decree based on the custom. If we want further authority, it is to be found in the case of Lachman Rai v. Akbar Khan ILR 1 All 440 in which case the learned Judges considered that proof afforded by judicial record was amongst the most cogent evidence of an existing custom and that it had been enforced. Judicial records in England not between the same parties have been admitted as evidence of the existence of local customs.

3. It appears to us that the learned District Judge was fully authorised in finding that the custom of pre-emption existed in the town. It is said that there was no evidence of the custom having existed or of its having been enforced in this particular part of the town or muhalla. That in our judgment is immaterial. The custom applied to the whole town and the greater included the less. There was no evidence that the custom did not apply to this particular ward.

4. The remaining question is as to the price. The sale-deed stated the price at Rs. 2,500. The Judge found that the true price was Rs. 1,500. It was proved that Rs. 2,500 had been paid in the presence of the Registrar, but there was evidence that immediately afterwards Rs. 1,000 of that sum was returned to the vendee, and there was evidence that the vendor and vendee had said that Rs. 1,500 was the price. That was a question for the Judge, and we cannot interfere with his finding.

5. There is one point which we have omitted to mention, that is, it is contended that the plaint is bad because it does not specifically set out what the custom was. No doubt it would have been more regular if the custom had been specifically defined in the plaint, but the parties were put to no inconvenience. Bach side called evidence, one to the custom and the other to rebut it.

6. We are of opinion that there is no sufficient reason to warrant us in disturbing the judgment of the Court below. The appeal is dismissed with costs.