

(1929) 12 AHC CK 0017

Allahabad High Court

Case No: None

Rahim Baksh and Another

APPELLANT

Vs

Mt. Bachauna and Others

RESPONDENT

Date of Decision: Dec. 14, 1929

Hon'ble Judges: Sulaiman, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Sulaiman, J.

This is a plaintiffs' appeal arising out of a suit for pre-emption of a house situated in mohalla Shaikhpur in the city of Gorakhpur. The plaintiffs are Mahomedans. The half shares of the same house were sold under two separate deeds by two separate vendors, one of whom was a Hindu and the other a Mahomedan. The plaintiffs alleged that there was a custom prevailing in this "mohalla" under which there was a right of pre-emption. They further alleged that they had made the necessary demands under the Mahomedan Law and were entitled to pre-empt the house. It was obvious that their claim under the Mahomedan Law could not be entertained as regards the sale by the Hindu vendor.

2. Both the Courts below have dismissed both of the suits. The lower appellate Court has distinctly found that no custom of pre-emption has been proved, and has also found that the demands under Mahomedan Law were defective, inasmuch as at the time of making the second demand there was no reference to the first demand.

3. We agree with the Court below that the evidence to prove the alleged custom is wholly insufficient. The plaintiffs rely principally on a judgment in a second appeal of 1882, in which the only point urged in the High Court was whether a custom of pre-emption was or was not invalid in law. The High Court never considered the sufficiency or otherwise of the evidence. Reliance is also placed on a decree of 1887, which is a compromise decree. The judgment is not produced, and its value cannot be great. As against this, there are three recent judgments pronounced by the

Gorakhpur Courts, in which it was distinctly held that the custom had not been established. The plaintiffs have failed to prove that within the last 40 years a right of pre-emption has been exercised, although, in view of the fact that "mohalla" Shaikpur is in a big town like Gorakhpur, a large number of sales of houses must have taken place during this interval.

4. The learned counsel for the respondents wanted to produce a certified copy of a judgment of this Court delivered in 1927, in which all the documentary evidence was reviewed and it was held that the custom was not proved to prevail in this "mohalla." We do not think that we should admit the fresh evidence at this stage, though we might, if we like, refer to it as a ruling explaining the judgment of 1882. Having considered the whole evidence, we have come to the conclusion that the custom has not been established.

5. As there was an interval of time between the performance of the first and the second demands and the first demand was neither made on the premises nor in the presence of the vendors or the vendees, we cannot possibly hold that there was a combined demand. The finding of the Court below that there was no reference in the second demand to the first demand is fatal. We may only refer to the case of [Dr. Sadiq Ali Vs. Abdul Baqi Khan and Another,](#)

6. The result is that the appeal fails and is dismissed with costs, including fees in this Court on the higher scale.