

(1919) 02 AHC CK 0023

Allahabad High Court

Case No: None

Deokinandan

APPELLANT

Vs

Mahtab Rai

RESPONDENT

Date of Decision: Feb. 17, 1919

Citation: AIR 1919 All 414 : (1919) ILR (All) 426 : 50 Ind. Cas. 200

Hon'ble Judges: Muhammad Rafiq, J; Henry Richards, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Henry Richards, Kt., C.J. and Muhammad Rafiq, J.

This appeal arises out of a suit for pre-emption. Both the courts below dismissed the claim of the plaintiff, who has come here in second appeal. The plaintiff is a co-sharer in the same mahal as the vendor. The defendant vendee is a proprietor in another mahal in the village. It appears that in the year 1872 the whole village constituted one mahal, but in the year 1887 or thereabout perfect partition took place, when a number of new mahals were formed, and the defendant vendee is in one of these new mahals. Both the courts seem to have been of opinion that a custom of pre-emption prevailed, but they thought that because the vendee was a co-sharer in the village the pre-emptor had no better right than him and therefore his suit must fail. The evidence of the existence of the custom was the wajib-ul-arz of 1872. This document contains a clear record as to pre-emption. In 1887, after partition (according to the finding of the court below) each of the new mahals adopted the old custom. It seems to us that, once we assume that the custom existed, the plaintiff had a right of pre-emption, and that as against him the defendant vendee was a complete stranger. The custom of 1872 was a custom between co-sharers. Every proprietor in the village then was a co-sharer with the other. The change brought about in the year 1887 was that the proprietors in each of the new mahals ceased to have any community of interest with the proprietors of the other mahals. In short, the proprietors of the different mahals ceased to be

co-sharers with each other. The facts and circumstances connected with the case of Ganga Singh v. Chedi Lal I.L.R.(1911) All. 605 are very similar to the present case. It appears that the court of first instance found the amount of consideration. We, therefore, allow the appeal, set aside the decrees of both the courts below, and in lieu thereof decree the plaintiff's claim for pre-emption of the property conditional upon his paying the sum of Rs. 250 within three months from this date. If he fails to pay the money within the time allowed the suit will stand dismissed with costs in all courts. If the money is duly paid in the plaintiff will have his costs in all courts.