

(1885) 01 AHC CK 0003

Allahabad High Court

Case No: None

Gokal Singh and Another

APPELLANT

Vs

Mannu Lal and Another

RESPONDENT

Date of Decision: Jan. 7, 1885

Citation: (1885) ILR (All) 772

Hon'ble Judges: W. Comer Petheram, C.J; Mahmood, J

Bench: Division Bench

Final Decision: Allowed

Judgement

W. Comer Petheram, C.J.

In this case, an arrangement was made among three owners of shares in a village, who held those shares jointly, in the sense that there had been no division between them, [774] that if any co-sharer should sell his share, a right of pre-emption should belong first to a near shareholder, next to a partner in the thoke, and thirdly, to a partner in the village. This agreement was entered in the wajib-ul-arz. After it had been made, what is called a "perfect partition" among the co-sharers was effected. In other words, the whole inhabitable and cultivable area of the village was absolutely divided, and the joint ownership of the shares was determined. This having been done, Mr. Conlan argues that there ceased to be any entire thing which can be called a "village" in the sense in which the term is used in the wajib-ul-arz, for the reason that each of the original co-sharers thenceforth was the owner of a separate property. If that argument were good, every "village" would cease to exist where there was no joint ownership. But although there may be no joint ownership in a village, there may still be some community of interest, and also a considerable community of things held and used in common by all the inhabitants, such, for instance, as roads, drains, and other things which are necessary to all. Hence, even after partition, something is still left in common; and, with reference to the merits of this case, there remained enough community of interest to justify the preference given by the wajib-ul-arz to partners in the village over strangers in respect of the

right of pre-emption. The meaning of the word "village" as used in the wajib-ul-arz is well understood. It means a definite area of land with houses upon it. Every one living in that area has a share in it, and may therefore be regarded as a "shareholder" within the meaning of the document in question. Here one of these shareholders wishes to sell his share. The person who desires to purchase it is also a shareholder. The case therefore falls within the terms of the wajib-ul-arz specifying the conditions under which the right of pre-emption may be enforced. The agreement appears to me to have been in force as well after the partition as before it. I am of opinion that the appeal should be allowed, and that the case should be sent back for a new trial upon the issues numbered (3) and (4) in the Subordinate Judge's judgment.

Mahmood, J.

2. Concurred.