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## **Gopal Prasad and Another Vs Badal Singh**

## None

Court: Allahabad High Court

Date of Decision: Dec. 14, 1908

Citation: 1 Ind. Cas. 819

Hon'ble Judges: Richards, J; Griffin, J

Bench: Division Bench

Final Decision: Dismissed

## **Judgement**

1. This and the connected appeals arise out of pre-emption suits. The plaintiff claims on foot of the wajib-ul-arz. It has been found by both the

Courts below that the wajib-ul-arz records a contract and not a custom. The Court of first instance dismissed the suits upon the ground that the

period of settlement for which the wajib-ul-arz was prepared had come to an end. The lower Court found that the wajib-ul-arz was still in

existence at the dates of the sales in the present appeal it has been urged on behalf of the defendants vendees that inasmuch as the settlement, and

therefore the contract, had come to end before the time at which a decree could be given, the plaintiff's right to pre-empt must fail. For the

purpose of these appeals it is assumed that the plaintiff had, at the time of the institution of the suits, a right to pre-empt the property by virtue of the

contract which is recorded in the wajib-ul-arz, and the only question argued here and which we have to decide is whether or not the mere fact that

before the date of the decree the period of settlement had determined, prevents the plaintiff from enforcing the right of pre-emption and getting a

decree in his favour. The point would be absolutely clear in the absence of authority. The contract was a contract which entitled the plaintiff to

purchase if any co-sharer sold his share so long as the contract lasted. It is admitted for the purposes of these appeals that the contract was in full

force and effect at the time of the sales. Dr. Tej Bahadur on behalf of the appellants, has cited the cases of Janki Prasad v. Ishar Das 21 A. 374

and Ram Gopal v. Piari Lal 21 A. 441. In both these cases the plaintiff had a right of pre-emption by virtue of the position of his property in the

mahal. Before the sale was made partition proceedings had been commenced for the division of the mahal, and before the time for decree had

arrived the plaintiff had ceased to be entitled to pre-emption by reason of the division of the mammal in the partition proceedings. He had ceased

to be a co-sharer and the Courts held that a decree ought not to be made in his favour, because the principle underlying the right of pre-emption

was the keeping out of the stranger. It will be seen that in the cases cited, the plaintiff's position had quite changed during the pendency of the suit.

If he had occupied the position at the time of the sale that he occupied at the time of the decree he would have had no right of pre-emption at all. In

the present case the plaintiff"s right at the time of the decree was exactly the same right as he had at the time of the institution of the suit. In our

judgment, the cases cited do not apply and the decision of the Court below was correct. We dismiss the appeal with costs.