

**(1908) 12 AHC CK 0011**

**Allahabad High Court**

**Case No:** None

Gopal Prasad and Another

APPELLANT

Vs

Badal Singh

RESPONDENT

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**Date of Decision:** Dec. 14, 1908

**Citation:** 1 Ind. Cas. 819

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

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **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.