

(1886) 06 AHC CK 0004

Allahabad High Court

Case No: None

Muhammad Hasan

APPELLANT

Vs

Munna Lal and Another

RESPONDENT

Date of Decision: June 1, 1886

Citation: (1886) ILR (All) 434

Hon'ble Judges: Tyrrell, J; Oldfield, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Oldfield, J.

This suit has been brought to enforce a right of preemption in respect of certain property sold by the defendant Baldeo Das to the defendant Munna Lal. The suit has been dismissed in the Court of First Instance, and that dismissal has been affirmed by the Lower Appellate Court. The suit is based on contract and custom as evidenced by the wajib-ul-arz; and the only ground on which the lower Courts have dismissed the suit is, that any contract which may be founded on the wajib-ul-arz is not binding on the vendor-defendant, as it does not bear his signature; and so far as the wajib-ul-arz was relied on as proof of the custom of pre-emption, the Judge attached no weight to it, because it was drawn up when Regulation VII of 1822 was in force, and at that time there was no legal presumption of its accuracy. He dismissed the plaintiff's claim on the ground that the evidence adduced by him did not prove that pre-emption existed in the village by custom. The Judge appears to me to have erred in dealing with the evidence. Although this particular wajib-ul-arz was made before Act XIX of 1873 came into force, yet the weight which should attach to its entries, both as proof of the contract as well as the custom is very strong, and the observations made by this Court on this subject in the Full Bench case of Isri Singh v. Ganga ILR All. 876 are as applicable here as in that case. The wajib-ul-arz is a document of a public character, prepared with all publicity, and must be considered as prime facie evidence of the existence of any custom which it

records. Its record of the existence of a custom of pre-emption is sufficiently strong evidence so as to cast on those denying the custom the burden of proof; and in the same manner, when it records a contract of pre-emption between the share holders, there is a presumption that it is binding on the shareholders. Looking to the public character of this document and the way it is prepared, and that all shareholders, whether signing it or not, must be presumed to have assented to its terms, the inferences to be deduced from it cannot be disregarded except when they are rebutted by evidence of an opposite character. The grounds, therefore, on which the Judge disposed of the appeal before him are not valid. He must re-try the question of the binding effect of this wajib-ul-arz, both as to contract and custom as regards pre-emption, and also the other issues that arise.

2. The case is therefore remanded for re-trial. The costs of this appeal will abide the result.

Tyrrell, J.

3. I concur.