

(1878) 01 AHC CK 0007

Allahabad High Court

Case No: None

Husain Bakhsh

APPELLANT

Vs

Dwarka Das and
Another

RESPONDENT

Date of Decision: Jan. 22, 1878

Citation: (1875) ILR (All) 564

Hon'ble Judges: Robert Stuart, C.J; Turner, J; Spankie, J; Pearson, J; Oldfield, J

Bench: Full Bench

Judgement

Robert Stuart, C.J.

I am reminded by the order of reference that in the case of Chando v. Alim-ud-din 1874 HCR NWP 28 I gave my judgment with hesitation. I did so, no doubt, but chiefly, if not solely, in consequence of the deference I felt for the opinion of my colleague, Mr. Justice Spankik, in the case of Shumshoolnissa v. Zohra Beebee HCR NWN 1874 2 who had most carefully and anxiously considered the question now referred in the burg judgment lie therein delivered. I cannot, however, say for myself that I had any doubt, that is, any argumentative doubt, on the question then before us, and I remain of the opinion I then expressed and subsequently in the Full Bench in the above case of Chundo v. Alim-ud-din HCR NWP 1874 28 and this is my answer to the reference.

Pearson, J.

2. For the reasons given in my judgment of the 1st December 1873, in Full Bench, in the case of Chundo v. Alim-ud-din HCR NWP 1874 28 I adhere to the opinion therein expressed.

Turner, J.

3. I have never been able to accept the grounds on which it was contended that on the side of the property by a Hindu a right of pre-emption arises. Our Courts are not strictly bound to enforce the law of pre-emption unless founded on custom or

contract, though they have gone so far as to give effect to that law where the vendor is a Muhammadan. The circumstance that on a sale a right of pre-emption accrues greatly affects the value of the property, and it has always appeared to me most inequitable to allow such a claim to be asserted on the sale of the property by a Hindu, if it be not based on local custom or special agreement.

Spankie, J.

4. The point has been so exhaustively argued in the decision of this suit and in the Full Bench case; cited in the order of reference that it is quite unnecessary to go over the ground again, I would say that, as the purchaser bought the property from a Hindu, there is no right of re-purchase from him under the Muhammadan law of pre-emption on the ground that the vendee and pre-emptor are both Muhammadans.

Oldfield, J.

5. The Muhammadan law recognises the right of pre-emption on the ground of avoiding the inconvenience to a neighbour which might arise by the sale of adjoining property to a stranger. The right can be claimed by all descriptions of persons without reference to difference of religion. We find in the Hedaya that "the privilege of Shaffa is established after sale, and the right of the Shaffee is not established until after demand be regularly made, &c." These and similar passages imply only that a complete title to claim the right of pre-emption accrues only on completion of sale, when the former owner's interest in the property has ceased, but the right itself would seem to spring out of a rule of Muhammadan law enacted in the interest of neighbours, and which would seem to be binding only on all those owners being vendors of property who are subject to Muhammadan law, and who necessarily hold their property subject to this rule of law, which will affect them and the property wherever a sale takes place to bring the rule of law into operation.

6. I concur in the view taken in *Pooroo Singh v. Hurry Churn Surmah* BLR 117. I would reply that the Muhammadan law of pre-emption does not apply to the case referred to.