
(1868) 09 CAL CK 0003

Calcutta High Court

Case No: Special Appeal No. 166 of 1868

Prokas Sing

APPELLANT

Vs

Jogeswar Sing

RESPONDENT

Date of Decision: Sept. 9, 1868

Judgement

L.S. Jackson, J.

In this case, which we have taken time to consider, it now appears to us that the judgment of the lower Appellate Court must be affirmed. It was found, as a fact, that no express invocation of witnesses, such as is contemplated in the term Ishtehad had taken place, but that certain persons who had accompanied the pre-emptor, apparently for the purpose of carrying the money, which he intended to offer as the price of the property sold, were casual witnesses of what took place.

2. In the decision of the Full Bench, in the case of Fakir Rawot v. Sheikh Emambaksh (No. 1116 of 1861; 28th Sept., 1863), it was observed, that the right of pre-emption as created by the Mohammedan Law, or established by custom in certain parts of India, amongst persons not Mohammedans, is a right, weak in its nature, and which cannot be enforced except upon compliance with all the formalities which are prescribed.

3. It is quite clear that the particular formality of Ishtehad was not observed in the present case, and if we were to admit, in lieu of that formality, something which the plaintiff might choose to consider tantamount to it, we should be opening the door to serious laxities, or carrying the law of preemption further than it has been yet carried, or than probably its originators contemplated. We think, therefore, that the decision of the lower Appellate Court must be affirmed, and the special appeal dismissed with costs.