

(1890) 02 CAL CK 0007

Calcutta High Court

Case No: None

Rujjub Ali Chopedar

APPELLANT

Vs

Chundi Churn Bhadra and
Others

RESPONDENT

Date of Decision: Feb. 7, 1890

Citation: (1890) ILR (Cal) 544

Hon'ble Judges: W. Comer Petheram, C.J; Prinsep, J; Pigot, J; O'Kinealy, J; Ghose, J

Bench: Full Bench

Judgement

W. Comer Petheram, C.J., Prinsep, Pigot, O'Kinealy and Ghose, JJ.

The question referred for the decision of the Full Bench is, "when the person claiming a right of pre-emption has performed the talab-i-mawasibat in the presence of witnesses, but not in the presence either of the seller or of the purchaser, or on the premises, is it necessary, when performing the talab-i-ishad, that he should declare that he has made the talab-i-mawasibat, and at the same time should invoke witnesses to attest it? "

2. According to Mahomedan law, if the claimant neglects to perform the legal forms necessary to be observed in asserting the right of pre-emption, his claim is null and void. The ordinary forms are as follows: He must make an immediate claim or talab-i-mawasibat and subsequently an affirmation with witnesses called the talab-i-ishad. The latter consists in the party going upon the lands the right of pre-emption to which he claims, or to the seller or purchaser, and saying that he is a claimant of pre-emption, that he has already asserted his claim, and that he continues to do so, and at the same time calling witnesses to the fact of his having made it. One essential portion of these forms is the attesting the immediate demand, and this is not only the view put forward in Baillie's Digest, but also the view expressed in Hamilton's Hedaya and in Macnaghten's Precedents. Moreover, it is the view held by this Court, with the exception of the case of Nundo Pershad Thakur v. Gopal Thakur ILR Cal 1008 "We think the view expressed in that case is not

correct, and we answer the question in the affirmative.

3. The result, so far as this appeal is concerned, is that the appeal will be dismissed with costs.