

Chhajju Vs. Alam Chand

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Court : Allahabad

Decided On : Apr-20-1923

Reported in : (1923)ILR45All559

Judge : Lindsay and ;Sulaiman, JJ.

Appellant : Chhajju

Respondent : Alam Chand

Judgement :

Lindsay and Sulaiman, JJ.

1. Two points have been discussed before us in this second appeal. The first point is whether the courts below were right in holding that the wajib- ul-arz of 1863 was evidence of a custom.
2. It is contended before us that, because the wajib-ul-arz in question is so framed as to refer to matters other than preemption, it ought not to be treated as a record of custom but merely as a record of contract.
3. It has no doubt been held in a number of cases which have been consistently followed, that if a wajib-ul-arz contains matters which could not possibly be the subject of a custom, then the ordinary presumption that the wajib-ul-arz is a record of custom is overturned. That principle is laid down in the case of Fazal Husain v.

Muhammad Sharif (1914) I.L.R, 36 All. 471. It was also enunciated in another case Surajbali Singh v. Mohammad Nasir (1918) 16 A.L.J. 879. In this latter case, we may observe, the wajib-ul-arz upon which reliance was placed, in addition to providing for pre-emption, made provisions for other matters, such as redemption of property mortgaged, by a person who had no interest in the right to redeem. Clearly in cases of this latter description the wajib-ul-arz does contain matters which cannot possibly be the subject of custom.

4. Coming now to the wajib-ul-arz with which we are concerned in this case, there can be no doubt that other matters as well as pre-emption are referred to. We find a reference to the manner of inheritance. We find reference to the powers of the widow who is in possession after her husband's death. There are declarations as to how property descends when a deceased co--sharer has left two widows. There are also provisions for the exclusion of daughters and daughters' sons from inheritance. It cannot, however, be said that the matters which we have just referred to cannot be the subject of custom, for it is notorious that there is a widespread custom, for example, of the exclusion of daughters and daughters' sons from inheritance; another well-known custom is the custom of sribant or the division of property in accordance with the number of wives.

5. Looking at this wajib-ul-arz we are unable to hold that it falls within the purview of the rulings to which we have referred and we consider therefore that the courts below were justified in holding that the wajib-ul-arz was a record of custom.

6. The only other point raised is with regard to certain findings of fact of the courts below.

7. The sale in this case purported to be for a sum of Rs. 1,200. It was recited in the sale-deed that a sum of Rs. 550 was being left with the purchaser to redeem a prior mortgage and the balance of Rs. 650 was to be paid before the registering officer. Both the courts below are agreed that the money was handed over to the vendor before the registering officer but they are also agreed that after it had been so made over it was returned again to the purchaser. On the findings, therefore, of the courts below this transfer was made for a sum of Rs. 550 only.

8. In these circumstances it has been argued by the learned Counsel for the appellant that there was no sale at all, inasmuch as the vendor got nothing. We see, however, that the learned Judge of the court below has recorded a finding that the market value of the property sold was not more than Rs. 500. If, therefore, by this transfer the vendor was getting rid of the liability to pay a sum of Rs. 550 it cannot be said that there was no consideration for the transfer. We may observe that the prior mortgage in respect of which Rs. 550 was left with the purchaser was of the year 1917 and that a suit to enforce the personal obligation of the mortgagor was well within time. It seems to us that the argument that this transfer does not amount to a sale cannot succeed.

9. The result is that we dismiss this appeal with costs.

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