

Mohan Singh and anr. Vs. Shiv Charan Singh and ors.

Mohan Singh and anr. Vs. Shiv Charan Singh and ors.

SooperKanoon Citation : sooperkanoon.com/459819

Court : Allahabad

Decided On : Mar-04-1940

Reported in : AIR1940All422

Appellant : Mohan Singh and anr.

Respondent : Shiv Charan Singh and ors.

Judgement :

Iqbal Ahmad, J.

1. This is an appeal by unsuccessful plaintiffs whose claim for pre-emption has been dismissed by both the Courts below on the ground that a custom of pre-emption did not prevail in the village in dispute. The property sold is situated in village Garhia Madsua. This village is in pergana Patiyali. The plaintiffs are co-sharers in and the vendees are admittedly strangers to village Garhia Madsua. The defendants, however, contested the suit on the allegation that a custom of pre-emption did not prevail in the village. In proof of the existence of custom the plaintiff relied on a wajib-ul-arz of 1867. This wajib-ul-arz is a curious document. It is a wajib-ul-arz not with respect to any mahal or to any village but it purports to be a wajib-ul-arz of all the villages of Pargana Patiyali. A custom of pre-emption is recited in this wajib-ul-arz. The vendees on the other hand filed a copy of the wajib-ul-arz of village Garhia Madsua. In this wajib-ul-arz there is no mention of any right of pre-emption.

2. In accordance with the provisions of Section 5, Pre-emption Act, a right of pre-emption is to be deemed to exist in mahals or villages in respect of which any wajib-ul-arz prepared prior to the commencement of the Act records a custom, contract or declaration with respect to the right of pre-emption. As in the village wajib-ul-arz produced by the vendees no mention of the right of pre-emption was made a custom of pre-emption could not be deemed to exist in the village in dispute. In view of the wording of Section 5 the wajib-ul-arz recording a custom, contract or declaration about the right of pre-emption must be a wajib-ul-arz with respect to the mahal or village in which the property transferred is situated. The wajib-ul-arz relied upon by the plaintiffs does not purport to be a wajib-ul-arz with respect to any particular mahal or to any particular village. On the other hand, it purports to be a consolidated wajib-ul-arz with respect to all the villages in a particular pargana. That wajib-ul-arz is not, therefore, such a wajib-ul-arz as is contemplated by Section 5, Agra Pre-emption Act. The record of the custom of pre-emption in that wajib-ul-arz could not as such be made the basis of a finding that a custom of pre-emption prevails in the village. Apart from this the wajib-ul-arz relied upon by the plaintiffs has been held in a series of cases to be a mere draft and not a completed wajib-ul-arz. In a case that came up to this Court it was held that the wajib-ul-arz of 1867 was not prepared and attested in the manner required by law and that 'it was a mere draft awaiting signature.' This shows that the wajib-ul-arz of 1867 was not prepared in accordance with the law or the rules for the time being in force. No evidentiary value, therefore, attaches to that wajib-ul-arz. As the village wajib-ul-arz produced by the vendees made no mention of the right of pre-emption the Courts below were right in holding that a custom of pre-emption was not proved to exist and in dismissing the suit. Accordingly I dismiss this appeal with costs.

3. N.B. Leave to appeal under the Letters Patent is refused.