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Court : Allahabad

Decided On : Nov-10-1924

Reported in : AIR1925All345

Appellant : Narain Singh

Respondent : Gajraj

Judgement :

1. After hearing the learned Counsel we think that this appeal should prevail. The question is one of interpretation of a wajib-ul-arz. It is not denied that a custom of pre-emption exists. The question is whether under the record of that custom the plaintiff had a better right to acquire the property than the defendant-vendee. The Court of first instance held in favour of the plaintiff and gave him a decree for pre-emption. The lower appellate Court has differed from the view taken by the Court of first instance and holding that the plaintiff had no preferential right, it dismissed his claim. It seems to us on a perusal of the wajib-ul-arz before us that the interpretation of the lower appellate Court cannot be supported. According to what we find in the wajib-ul-arz the provisions relating to pre-emption are contained in the second chapter which deals with the rights of co-sharers inter se (ba khudha). We come then to Clause 13 which deals with the custom of preemption and there it is stated that where a share of a co-sharer is transferred by a sale or mortgage, first a co-sharer who is a sharik and then co-sharers of the mahal can claim pre-emption, provided they give the real value of the property, such as might be offered by a stranger. In case of a dispute as to the price the decision is to be

made through the Court.

2. The learned Judge, relying on certain rulings to which he refers in his judgment, held that there no right of pre-emption arose in favour of any one in the village until there was an attempt to sell to a stranger, i.e., a person outside the village altogether.

3. The language of the wajib-ul-arz referred to in the case with which the learned Subordinate Judge has supported his judgment was different from the language of the wajib-ul-arz now before us, and in cases of this kind we cannot interpret the language of one document by the language of another.

4. Taking the words as they stand, we think it cannot be said that the right of pre-emption arises only in a case where an attempt is made to sell a portion of the village property to a stranger. The words are absolute : 'Whenever the share of a co-sharer is sold or mortgaged.' It is not said 'sold or mortgaged to any person in particular.' All that is indicated is that if any sale or mortgage takes place then the right of pre-emption is exercisable by certain persons in a certain order. We cannot hold that there is no preferential right inter se between co-sharers for, as we have already said, the chapter of the wajib-ul-arz in which this record occurs deals expressly with the rights of co-sharers inter se.

5. It may be that the learned Judge was led to his conclusion by the words 'ghair admi' which occur in the context. The words 'ghair admi' or stranger there are used in connection with the value of the property sold. In other words it is laid down that what the co-sharer must give, in order to obtain pre-emption, is to be the real or market price, i.e., the price which an outsider would give for the property. We do not think that the use of the expression 'ghair admi' can be taken in any sense to restrict the general meaning of the words which precede them, and which show that a right of pre-emption is to arise in any case where a portion of the village is sold or mortgaged. We do not think it necessary to refer to reported cases in connection with a question of the mere construction of a particular document. It seems to us that the Court of first instance in this case came to a right conclusion and that the decision of that Court should be upheld. We therefore allow the appeal, set aside the decree of the Court below, and restore the decree of the

Court of first instance. The plaintiff is entitled to his costs both here and in the Courts below including fees in this Court on the higher scale.

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