

DIn Dayal Vs. Ramdhan

DIn Dayal Vs. Ramdhan

SooperKanoon Citation : sooperkanoon.com/473219

Court : Allahabad

Decided On : Feb-09-1915

Reported in : AIR1915All143(1); 28Ind.Cas.306

Judge : Henry Richard, C.J. and; Tudball, J.

Appellant : DIn Dayal

Respondent : Ramdhan

Judgement :

1. This appeal arises out of a suit for pre-emption. The plaintiff and the vendee are both co-sharers and the former stated in his evidence that he was also a relation. An entry in the wajib-ul-arz records a right of pre-emption first in the hissadar kuribi and then hissadar baidi. It appears that at one time there were a number of subdivisions of the mahal which have now ceased to exist. The Court of first instance dismissed the plaintiff's suit, holding that a custom giving the plaintiff a preferential right over the defendant was not proved. The lower Appellate Court reversed the decrees of the Court of first instance and remanded the case. The vendee comes here in appeal.

2. We think that the decree of the Court of first instance was correct and ought to be restored. It lay upon the plaintiff to prove not only that a custom of pre-emption existed, but that there was a custom under which he had a right to pre-empt aa against another co-sharer. The only evidence he adduced was the extract from the

wajib-ul-arz. This extract (sic) the expressions 'karibi' and 'baidi'. They are ambiguous expressions which may refer to nearness or distance in space, or nearness or distance in relationship. The opening paragraph of the plaintiff's own plaint would seem to show that he then attributed the meaning of space' to the expressions and not that of relationship'. The written statement of the defendant shows that he also attributed this meaning to the expressions. In our opinion it cannot be said that the plaintiff by production of an entry, this meaning' of which was more than doubtful, discharged the onus which lay upon him.

3. We allow the appeal, set aside the order of the Court below and restore the decree of the Court of first instance with costs in all Courts.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com