**Chahal and ors. Vs. Dwarka and ors.**

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**SooperKanoon Citation** : sooperkanoon.com/474175

**Court** : Allahabad

**Decided On :** Jul-01-1921

**Reported in** : 64Ind.Cas.484

**Judge** : Tudball and ;Sulaiman, JJ.

**Appellant** : Chahal and ors.

**Respondent** : Dwarka and ors.

**Judgement** :

1. This is an appeal from the decision of the lower Appellate Court in a pre-emption suit. The Court of first instance dismissed the suit, on the ground that the evidence before it was insufficient to establish the custom on which the plaintiff based his title. The lower Appellate Court held that the evidence before it was sufficient and decreed the claim. Its judgment practically gives DO reason whatsoever except that it mentions three reported decisions. It runs as follows:

The learned Subordinate Judge has held it: to be a record of contrast, but I differ from him and hold that the entry in respect of pre-emption recorded a custom having regard to the following rulings.' The judgment is highly unsatisfactory. The case comes from the District of Saharanpur. The point taken before us on behalf of the defendants is that the evidence on the record is absolutely insufficient to establish the custom alleged by the plaintiff. In the present case the plaintiff produced nothing but an extract from the wajib-ul-arz of 1867. This class of wajib-

ul-arz from Saharanpur has been repeatedly before this Court in these preemption suits and in case after case this Court has ruled that this class of wajib-ul arz, unsupported by any other evidence, is in itself quite inadequate to establish any custom at all. The clause in itself does not state that what is entered in it is a custom. It contains numerous entries which clearly, on the face of the record itself, could not have related to customs in existence but are merely expressions of the wishes of the co-sharers as to certain practices which they approved. For instance, in this very paragraph they state that no co-sharer shall make a gift of his property to his daughter or his daughter's son. It further lays down that a widow may make a gift of her husband's property to her husband's relations but not to her own relations, It is unnecessary to set these out at any length. The case is practically on all fours with Second Appeal No. 1399 of 1918 which was decided by this Court on the 9th of April 1921 and also the case of Dhian Kuar v. Diwan Singh 10 Ind. Cas. 558 : 8 A.I.J.786. There have been many other decisions following the above reported case, and we see no reason whatsoever to differ from the principle laid down in those decisions. In our opinion the present wajib-ul-arz standing alone, unsupported by any other evidence is utterly insufficient to establish the custom of pre-emption. The result is, we allow the appeal, set aside the decree of the lower Appellate Court and restore that of the Court of first instance. The appellants will have their costs in this Court and in the lower Appellate Court. Costs in this Court will include fees on the higher scale.