

Riazuddin Vs. Mt. Phula Devi and anr.

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Court : Allahabad

Decided On : Oct-22-1929

Reported in : AIR1929All977

Appellant : Riazuddin

Respondent : Mt. Phula Devi and anr.

Judgement :

Sulaiman, Ag. C.J.

1. The facts are set forth in the order of reference. The main question to be decided is whether when an existing mahal contains portions of earlier mahals the wajibularzes of some of which contain entries recording a right of pre-emption and of the others do not, a right can be presumed to exist in respect of the whole of the existing mahal or in respect of only that portion of it which has come out of the original mahals containing such a record or whether a right has entirely ceased to exist.

2. Unfortunately there is no section in the Act expressly referring to the case of union of mahals. The answer to the question referred has to be given on an examination of the language of the sections as they stand.

3. Section 5 provides that a right of pre-emption shall be deemed to exist only in mahals in respect of which any wajibularz prepared prior to the Act records a custom, contract or declaration whatever its extent or in whatever form it may be

expressed. Sub-Clause 6 provides that where such a right is recorded in respect of any village or mahal, and such village or mahal has been partitioned, a right shall be deemed to exist in all the portions into which such village or mahal has been divided; It seems to me that the object of Section 5 is to lay down a rule to determine whether a right of pre-emption exists, in an existing mahal or village. Once such a right is presumed to exist the question as to its nature and extent is not to be determined by Section 5 at all but we have to look to other sections like Sections 11 and 12 for that purpose, which lay down the statutory right of pre-emption.

4. There can be no doubt that the words mahals or villages in Sub-clause 1 refer to the existing mahals or villages in which the right of pre-emption is to be presumed. Had the expression been mahals or villages of which any prior wajibularz had been prepared, I would have been constrained to hold that without producing the wajibularz of a whole village or mahal out of which the existing mahal or village has come the plaintiff cannot establish the existence of a right of pre-emption. The expression used by the legislature is, however, much wider in scope and is not necessarily restricted to wajibularzes prepared for the whole of the existing mahals or villages. This view is further strengthened by the expression 'whatever its extent and in whatever form it may be expressed' which undoubtedly implies that even if the right entered is limited in its scope and applies either to a limited body of cosharers or to a limited area a right in the whole mahal or village is to be deemed to exist.

5. I cannot therefore accept the contention of the learned advocate for the respondents that if in the existing mahal in the village there is any area which has come out of an earlier mahal in which such a right was never recorded the whole right is extinguished and a claim for pre-emption cannot be maintained as regards the sale of any portion of this new mahal.

6. The learned Subordinate Judge has conceded that the right continues at least as regards that portion of the new mahal Zard which has come out of mahal Bibi Begum and Niazullah Khan the wajibularzes of which did contain the record of a right of pre-emption in 1282 Fasli. But he is of opinion that right cannot be

extended to the other area in mahal Zard. It seems to me that to confine the right of preemption to a specified area in a mahal is contrary to the intention of the legislature as is to be gathered from the provisions of Sections 11 and 12. If a right of pre-emption exists in a specified area of mahal Zard it must be held that a right of pre-emption exists in that mahal. Section 11 provides that where any proprietary interest in land forming part of any mahal or village, in which a right of pre-emption exists, is sold a right of pre-emption shall accrue. There is no doubt that in the present case a proprietary interest in land forming part of mahal Zard has been sold and there can also be no doubt that a right of pre-emption must be deemed to exist in mahal Zard by virtue of Section 5. It, therefore, follows to my mind that the right of pre-emption must exist in the whole mahal Zard by virtue of Section 11 and that the entire body of cosharers mentioned in Section 12 have a right of preemption as is specified therein. A mahal is a complete fiscal unit and for purposes of the existence of a right of pre-emption the Act refers to mahals or villages and does not refer to portions of mahals or villages. It, therefore, seems to me impossible to hold that the right of pre-emption is confined to a portion only of mahal Zard and not to the rest of it. This is my answer to the question referred.

Mukerji, J.

7. The facts briefly are as follows: In 1875 the village of Babaina consisted of four mahals, namely, Nadir Khan, Niazullah Khan, Bibi Begum and Bhikari Das. The mahal Bibi Begum had a wajib-ul-arz which contained a mention of a custom of pre-emption. In 1890 the mahal Bibi Begum came to be divided into two mahals, namely, Mahal White and Mahal Red. Mahal Red was owned by Mt. Imamunnissa whose property, on her death, passed to her husband Qadir Shah. Qadir Shah acquired the two mahals of Nadir Khan and Niazullah Khan and, in 1898, he applied that his three mahals, namely Mahal Red, being a portion of the original mahal Bibi Begum and mahals Nadir Khan and Niazullah Khan should be united into one mahal. His application was granted. Later on in 1924, the new mahal which was known as mahal surkh Qadir Shah was divided into three mahals, namely, Yellow, Green and Sky colour. Two of the cosharers in mahal Zard have sold their shares and two separate suits for preemption have been brought. In these circumstances, the question for determination is:

whether, having regard to the provisions of the Agra Pre-emption Act, a right of preemption exists in mahal Zard

8. In my opinion the answer to this question is to be sought for within the provisions of Section 5, Agra Pre-emption Act The most important portions of that section, so far as it affects the present question, are these:

A right of pre-emption shall be deemed to exist only in mahals * * * in respect of which any wajib-ul-arz prepared prior to the commencement of this Act records a custom * * (a) recognizing *** a right of pre-emption * * * whatever its extent and in whatever form it may be expressed * * *

9. Before I consider this language, I must bear in mind that the law does not profess to recognize any existing custom. It professes to create a right of custom, it does not matter whether one existed or not before the Act was passed. That being so, we have to see what were the areas in which it was deemed desirable to establish a right of custom. Now coming to the language quoted above it appears to me that the language has to be applied to the mahal with respect to which the question has arisen. That being so, we have to find out the circumstances mentioned in the language quoted above with reference to the mahal in suit. The right of pre-emption would be established if the conditions mentioned in the language quoted above are fulfilled. The conditions are that as to the mahal in question there should exist a wajibularz prepared before the Act came into operation. It is immaterial whether the wajib-ul-arz applies to the whole of the mahal or to a part of the mahal. This second condition, in my opinion, follows from the use of the words 'whatever its extent.' The first condition, in my opinion follows from the use of the words 'in respect of.' The words 'in respect of' have been explained in Webster's International Dictionary as meaning 'as to,' 'as regards,' 'with respect to.' I do not think that any wider language could have been used than the expression 'in respect of.' Therefore, the result of the joint application of the two expressions 'in respect of' and 'whatever its extent' is that if in any mahal as to which a question of right of pre-emption has arisen, there be found to exist a wajib-ul-arz which contained a mention of pre-emption, applicable to any portion of the mahal, by virtue of the rule enacted by the legislature, a right of pre-emption would

be deemed to exist throughout the whole mahal.

10. In my opinion the answer to the question is that a right of pre-emption has been granted and must be deemed to exist in the entire area of the present mahal Zard.

King, J.

11. I agree to the conclusions expressed by my learned brothers and need only give my reasons briefly. The question for our decision is whether a right of pre-emption shall be deemed to exist in the present mahal Zard of village Babina. This mahal was formed after the commencement of the Agra Preemption Act, 1922 and it contains a portion of mahal previously known as mahal Bibi Begum. A wajib-ul-arz prepared before the commencement of the Act, for mahal Bibi Begum contains a mention of the right of pre-emption in that mahal. It is clear, therefore, that a right of pre-emption must be deemed to have existed in mahal Bibi Begum. The answer to the question for our decision appears to me to depend upon whether the wazib-ul-arz prepared before the commencement of the Act for Mahal Bibi Begum can be held to have been prepared 'in respect of' the present mahal Zard.

12. In my opinion the word 'mahals' in Sub-section 1, Section 5, Pre-emption Act, must apply to existing mahals. In Sections 11 And 12 of the Act where the word 'mahal' or 'village' is used the word must clearly be taken to apply to the existing mahals or villages. According to the ordinary rule of construction we would give the same meaning of the same word in different parts of the same enactment unless we are compelled by the context to give a different meaning. I see no reason why the word 'mahals' in Sub-section 1, Section 5 should not be given the same meaning as in Sections 11 and 12. In my opinion, therefore, the word 'mahals' should be taken to apply to existing mahals. It is argued for the respondents that no wajib-ul-arz has been prepared for the present mahal Zard and therefore no right of pre-emption can be deemed to exist in that mahal. If this argument is accepted it would follow that whenever any new mahal is formed after the commencement of 'the Act by the union of two old mahals no right of pre-emption could be deemed to exist in it, since no wajib-ul-arz could have been

prepared expressly for the new mahal before the commencement of the Act, and the provisions of Section 5(3) would not be applicable. I do not think the language of Section 5(1) compels us to accept such a conclusion, which could hardly have been contemplated by the legislature. In my opinion the words 'in respect of' have a wide meaning. A wajib-ul-arz prepared expressly for an old mahal may be said to have been prepared 'in respect of' a new mahal which includes the whole or part of the old mahal. I hold therefore that the wajib-ul-arz prepared for the old mahal Bibi Begum may be said to have been prepared 'in respect of' the new mahal Zard which includes a portion of mahal Bibi Begum. It follows from the language of Section 5 that a right of pre-emption must be deemed to exist in the whole of the present mahal Zard.

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