

Muhammad Khalil Vs. Muhammad Ibrahim

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Court : Allahabad

Decided On : Jan-13-1916

Reported in : AIR1916All254; (1916)ILR38All201; 33Ind.Cas.349

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

Appellant : Muhammad Khalil

Respondent : Muhammad Ibrahim

Judgement :

Henry Richards, C.J. and Tudball, J.

1. This appeal arises out of a suit for pre-emption based on Muhammadan law. The second demand (talab-i-ishtishhad) was made by letter. The lower appellate court has held that this was not a compliance with the Muhammadan law, and has dismissed the plaintiff's suit. On the facts as found there was no reason why the plaintiff should not have made the second demand in person. It is urged, however, in appeal here that under the Muhammadan law as properly understood the pre-emptor has an option and he is entitled, if so he pleases, to make his second demand by letter. In support of this proposition certain learned authors on Muhammadan law have been cited including Baillie, MacNaughten and Ameer Ali. All these authors touch on the question as to how the second demand may be made. But their views are all based upon a text from Fatwa Alamgiri and must be read therewith. This has been translated for us and no exception is taken to the

translation. It is as follows: 'If a pre-emptor comes to know of the sale while he is on his way to Mecca and makes the talab-i-mawasibat, but is unable to perform the talab-i-ishtishhad personally, he ought to appoint a vakil to make the claim of pre-emption for him. If he cannot find anyone whom he may appoint his vakil, but finds a messenger, he ought to write a letter and in this letter he ought to appoint a vakil. If he fails to do so his right of pre-emption will be lost. But if he can neither find a vakil nor a messenger his right of pre-emption will not be lost until he finds one.' It is quite clear that the plaintiff was not unable to make these demands himself, nor is there anything to show that he was unable to appoint a vakil. We think the view taken by the court below was correct and ought to be affirmed We dismiss the appeal with costs.

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