

(1925) 10 AHC CK 0015
In the Allahabad High Court

Abdullah

APPELLANT

Vs

Badr-ul-Islam

RESPONDENT

Date of Decision : 23-10-1925

Acts Referred:

Citation : AIR 1926 All 127 : (1926) ILR (All) 233

Final Decision : Allowed

Judgement

1. What we have to deal with in this appeal is the true construction of a Wajib-ul-arz and in particular the clauses in it which relate to the right of residents in the town of Jahangirpur to transfer their houses.
2. According to the Wajib-ul-arz the inhabitants of this town are divided into two classes-the first consisting of persons who are described as "sharif qaum" or respectable classes and the Clause 2 consisting of agriculturists and others.
3. The Wajibularz sets out that persons in Clause 1, that is to say those who are "sharif" have a right to transfer "pukhta houses which they have built at their own expenses." The right of transfer is expressed to be a right to transfer the houses as they stand. In this connexion it is also to be noted that the Wajibularz expressly declares that the zamindars of the village have no light whatever to interfere with this privilege of people who belong to the "sharif qaum." In the case of the ordinary ""riava" and lower classes inhabiting the town it is distinctly provided that they have no right to transfer their houses although they have the privilege of selling the materials of their houses.
4. It is also to be added that neither class of residents has any power to transfer the sites of the houses those site s being the property of the zamindar.
5. In the present case it appears that in the year 1910 a shop was sold to the defendant-appellant Abdulla. In the year 1921 we have this suit brought by the zamindar asking for the ejectment of Abdulla, for the demolition of the shop and for the clearance of the site. It is not to be denied that when Abdulla took this property under the sale-deed just mentioned his vendor, a person who is

described as a Bania, was represented as having sold to Abdulla the site of the house. On all hands it is clear that this Bania had no right whatever to part with the site of the house which did not belong to him.

6. In the sale-deed the property which is sold is described as "dukan Khan" which means a "kutcha" shop.

7. The first Court decreed the plaintiff's claim. The first Court of appeal reversed this decision and dismissed the suit being of opinion (1) that Abdulla's vendor was a person belonging to the privileged Class (2) that he had a right to sell the house to Abdulla and that the landlord had no locus standi to interfere with this transaction or to claim possession of the site.

8. That decision has been reversed by a learned Judge of this Court against whose decision this present appeal is being entertained.

9. It has been argued before us that the learned Judge of this Court has placed too narrow an interpretation upon the language of the wajib-ul-arz. He has, it seems, definitely laid down that the power of transfer which is vested in members of the respectable class in this town is limited to cases in which the houses being transferred are what is properly known as pukka houses, that is to say, houses which have been built of kiln-dried bricks.

10. In the present case it is proved that the building is not a building which has been built of what is ordinarily known as pukka bricks. It is a building which has been constructed with sun-dried or katcha bricks. In spite of this, however, the first appellate Court held that the terms of the wajib-ul-arz applied to this building on the ground that it was a building of a substantial character. The Subordinate Judge thought that the expression "pukhta" did not necessarily imply that houses to which the term was applied were houses built of kiln-dried bricks.

11. He also referred to the evidence on the record to show that a considerable number of transfers of buildings of this description had taken place without the right of transfer being questioned by the landlord. He was undoubtedly entitled to refer to this evidence for the purpose of showing the sense in which the expression "pukhta" is used in this town of Jahangirpur.

12. It appears to us after listening to the arguments of the learned Counsel that the learned Judge of this Court has placed too narrow a construction on the expression "pukhta," and we think that the better sense was arrived at by the first appellate Court.

13. Taking the language as it stands in the context we are of opinion that the interpretation adopted by the first Court of appeal is more appropriate than that which found favour with the learned Judge of this Court. In the circumstances, therefore, we are of opinion that this appeal ought to be allowed, that the decree of the learned Judge of this Court should be discharged and that the decree of the first appellate Court should be restored. We direct accordingly and also direct

that the appellant do get all his costs in this Court, including fees on the higher scale.