
(1910) 05 AHC CK 0044
In the Allahabad High Court

Beni and Others

APPELLANT

Vs

Puran Singh and Another

RESPONDENT

Date of Decision : 10-05-1910

Acts Referred:

Citation : 7 Ind. Cas. 572

Hon'ble Judges : George Knox, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

George Knox, J.—The land in dispute in this second appeal is situate in Mouza Bama-puri Kalan, Purganah Kalpi, zila Jalaun in the Thok Daya Ram lambardar. Khata No. 5 was in the proprietary possession till recently of Harju respondent to this appeal, and half was owned by Puran Singh respondent and several other persons, relations of his, with whom we are not concerned in this second appeal. The appellants are landholders of Khata No. 9 of Thok Beni of the same Maha name unknown, and in this Khata and Thok the respondent Harju holds no land. Beni and Khup Chand have recently purchased the land in dispute from Harju. Upon purchasing the land, Puran Singh the respondent instituted the claim for pre-emption out of which this second appeal has arisen ; he bases his claim upon custom prevalent in the village evidenced by the entries in two village records-of-rights, the one prepared at the Settlement of 1865 and the second prepared at the Settlement of 1884-1885. The custom as recorded in the village record-of-rights of 1865 runs as follows:-- "If any shareholder wishes to dispose of his share he must do so in the first place to Baradaran, then to co sharers in the patti and after that to co-sharers patti digar." Both the Courts below holding that Puran Singh stands in the second category, have decreed plaintiff's suit. The defendants vendees come here in second appeal and their contention is that the village records are records not of custom but of contract. Secondly, that even if it be found that a custom of pre-emption was current in this Mahal, that custom was abrogated in its entirety when the partition of the Mahal as it originally

stood, was made in 1886 into five Mahals. Thirdly, that if this contention does not find favour, two of the appellants have a preferential right, inasmuch as they should be classed in the first and not in the third category. For the appellants, it was earnestly contended that the words contained in the village record-of-rights above-mentioned point conclusively to the fact that what was recorded was a contract, and not the fact of custom. Great stress is laid upon the word contained in the second village record-of-rights which runs thus: ""There have been no cases (Mukadima) no to now, but the currency of the right of pre-emption is accepted by us." (Rewa) haq shufa Tasdiq). Some stress is also laid upon the fact that the mahal record of 1865 makes no allusion as to what existed in the mahal, before that date. However, I think, we do not need to go into any subtleties of construction in this case ; both the village records-of-rights are couched in very simple language, they are in harmony with the idea of the existence of a custom in the mahal well-known, to and accepted by, the shareholders. I have been shown nothing which leads to the inference that the settlement officer misunderstood his duties, and recorded a contract when it was expected of him that he should only record custom, and there the record stands natural and fortified by the presumption which it is given it by the Land Revenue Act of 1873. My attention was directed to the case of Kanchan Singh v. Mani Ram 7 A.L.J. 213 and to the case of Tasadduq Husain Khan v. Alt Husain Khan 28 A.W.N. 121. In both those cases there was only one Wajib-ul-arz before the Court so far as I can ascertain, and the language in the village record-of-rights which were produced in each of those cases spoke haltingly. I have before me two successive village records-of-rights, which speak clearly and unhesitatingly. With regard to the contention that a custom was abrogated in its entirety when the perfect partition took place, I cannot find anything in the village record-of-rights, which will not adapt themselves to the new state of things by the partition in 1896. A mahal without, a Wajib-ul-arz was an anomaly and it has been held that where we do not find a village record-of-rights under such circumstances, it is but reasonable to presume that the former record-of-rights came on in its entirety, and prevailed so far as it was applicable to the new order of things. Partition does dislocate a mahal, and it is easy to conceive that the dislocation may be so great that the terms of the old record-of-rights can in no way be adapted to the change. Such is not the case here. The learned Vakil for the appellant referred me to the case of Daria v. Harkhial 6 A.L.J. 180, but so far as I can ascertain, the circumstances of that case were very different from the circumstances of the present case. That was a case in which pattis and Thoks were done away and an old Thok divided into a new Mahal. The village there seems to have been an abnormal one; this village is a normal one. Lastly comes the contention that the appellants rank as Baradran of Harjus. I cannot find that this is supported by any evidence and so far as there are findings, they are in the opposite direction.

2. The appeal is dismissed with costs which will include fees in this Court on the higher scale.