
(1911) 03 AHC CK 0002
In the Allahabad High Court

Dip Narain Singh

APPELLANT

Vs

Bhagwat Singh and Another

RESPONDENT

Date of Decision : 10-03-1911

Acts Referred:

Letters Patent Act, 1865 — Section 10

Citation : 9 Ind. Cas. 911

Hon'ble Judges : John Stanley, C.J.; Banerji, J

Bench : Division Bench

Judgement

John Stanley, C.J.—In my opinion the decision of the learned Judge of this Court, which is in agreement with the views of both the lower Courts, is correct. The only question for determination is whether the record of the right of pre-emption contained in the wajib-ul-arz of 1870 is of a right existing by contract or by custom. The wajib-ul-arzes were produced in evidence, the earliest being of 1839. In that wajib-ul-arz the record of the right of pre-emption is stated in general terms: the right to pre-empt being given to co-sharers generally. The next wajib-ul-arz is that of 1863 and in it we find two clauses of pre-emptors; the first being near co-sharers and the second co sharers in other thoks. Then we come to the wajib-ul-arz of 1870, and in it, as it appears to me, a new classification of pre-emptors is set forth. The categories are: (1) near pattidars (2); pattidars of the thoks, and (3) pattidars of the village. According to the wajib-ul-arz of 1863, the co-sharers in other thoks were all on the same footing as regards pre-emption. No co-sharer had a preferential right over another co-sharer in a thok. This was the right of pre-emption which existed in 1863. In 1870, however, a preferential right of pre-emption was given to a pattidar in a thoke in which the property to be preempted is situated over pattidars of the village. It appears to me that the record contained in this recent wajib-ul-arz is a record of a new contract entered into between the co-sharers. It is contended that the case is governed by the ruling of the majority of the Full Bench in Returaji Dubian v. Pahalwan Bhagat 1 A.L.J. 1040 : 7 Ind. Cas. 680. The ruling of the Full Bench should be loyally followed and if I found that the present case

was governed by the ruling in that case, I should certainly follow that ruling but it appears to me that the present case does not come within the principle enunciated by the Full Bench. In that case only two wajib-ul-arzes were relied on; in the first of which it was held, that the record was a record of custom which did not specify the details of the custom; that these details were subsequently embodied in the later wajib-ul-arz. In the present case the wajib-ul-arz of 1863 gave the details of the right of pre-emption then existing and the subsequent wajib-ul-arz of 1870 records a right which, is not consistent with the right mentioned in that wajib-ul-arz a custom is constant and unvarying. The case, therefore, is not, in my judgment, governed by the Full Bench ruling. I would therefore, dismiss the appeal.

Banerjee, J.

2. I regret I cannot agree with the learned Chief Justice. In my opinion the ruling of the majority of the Full Bench in *Returaji Bubian v. Pahalwan Bhagat I L.L.J. 1040 : 7 1nd. Cas. 680* applies to this case. As pointed out in the judgment of one of the learned Judges constituting the Full Bench, a provision in the wajib-ul-arz relating to pre-emption should, in the absence of anything to the contrary, be presumed to be the record of a custom. The earlier wajib-ul-arz of 1839 should, according to the views of the majority of the learned Judges of the Full Bench, be deemed to contain the record of a custom. The next wajib-ul-arz of 1863 only gives a detail of the custom which was recorded in brief in the earlier wajib-ul-arz, and the wajib-ul-arz of 1870 which apparently was prepared at a revision of Settlement in 1868 in accordance with the order of the Board of Revenue referred to in one of the judgments in the Full Bench case contains only a correction of the wajib-ul-arz of the 1863. There was thus no new contract entered into between the co-sharers and in accordance with the views of the majority of the Full Bench in the case referred to above, it should, I think, be held that the entries in the wajib-ul-arzes in question are entries of a custom. In this view the appeal should prevail and the case remanded to the Court of first instance.

3. As this is an appeal u/s 10 of the Letters Patent, it is governed by the provisions of Section 27 of the Letters Patent and the opinion of the Senior Judge prevails. The appeal is, therefore, dismissed, but under the circumstances without costs.