

(1909) 05 AHC CK 0034
In the Allahabad High Court

Dudh Nath Dube and Others

APPELLANT

Vs

Lallu Dube and Others

RESPONDENT

Date of Decision : 25-05-1909

Acts Referred:

Citation : 2 Ind. Cas. 855

Hon'ble Judges : George Knox, Acting C.J.;Griffin, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The firsts 2 grounds taken in the memorandum of appeal have been withdrawn and we have only to consider the 3rd ground which is to the effect that the wajib-ul-arz of 1860 is the record of a contract and not the record of custom. The plaintiffs came into Court and asked for a decree in their favour and based their right to it upon the custom of pre-emption that had been in vogue in the village from time immemorial. In the written statement the defendants deny the fact. The lower appellate Court came to the conclusion upon evidence that the custom of pre-emption did exist in the village. We have nothing further to do in this appeal than to consider the wajib-ul-arz and to decide whether the Court below placed a wrong interpretation on its terms. We have been referred to certain unreported cases in which it is said by the learned Vakil for the appellants, that the words of the wajib-ul-arz relied on were exactly the same as the words in the wajib-ul-arz now before us and that those words had been interpreted by this Court as being a record of contract and not of custom. But it is a well known principle that every case of pre-emption has to be decided upon the particular circumstances of the case. Bearing in mind the circumstances under which documents of this kind are drafted we are not prepared to attach any particular meaning to the exact words used. In the case before us, we have so far back as 1860 a wajib-ul-arz of the village in which the right of pre-emption is recorded as current in the village. As regards the origin of the right the entry in question is colourless. It is true that there is no entry in the wajib-ul-arz of

1885, but in the district of Gorakhpur, wajib-ul-arzes were prepared under special directions of the Board of Revenue to the effect that the entry was to be made one way or the other regarding the custom of pre-emption. The result is that nothing can be inferred from the absence of any record as to preemption in the wajib-ul-arz of 1885. It being an open question whether the right was a right based on contract or custom, we incline to the safer view that it was there-card of a custom. We do not think, therefore, that the Courts below placed a wrong interpretation on the document. We dismiss the appeal with costs.