

(1920) 08 BOM CK 0032

In the Bombay High Court

Case No : Second Appeals No's. 3 and 8 of 1919

Jagjivan Haribhai

APPELLANT

Vs

Kalidas Mulji
 Kalidas Mulji Vs Jagjivan Haribhai

RESPONDENT

Date of Decision : 12-08-1920

Acts Referred:

Citation : AIR 1921 Bom 188 : (1921) 23 BOMLR 81 : 60 Ind. Cas. 901

Hon'ble Judges : Norman Macleod, J;Fawcett, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Norman Macleod, Kt., C.J.—The plaintiff sued for a declaration that he was entitled to a right of pre-emption in reference to the plaintiff land, which admittedly was agricultural land. In the trial Court the second issue was: "Has plaintiff the right of pre-emption with respect to the land in suit whether according to law or to any local custom". The third issue was; 1920 Does defendant show that the right of pre-emption does not extend to or cannot be exercised in respect of agricultural land?" That issue was founded on the contention in the Kalidas defendants' written statement that the right of pre-emption did not extend to agricultural lands. The trial Court dismissed the suit finding issues 2 and 3 in the negative. In appeal this decree was set aside and the case was remanded for disposal on merits after substituting this issue: "Does plaintiff prove the existence of an ancient and invariable custom of pre-emption among Hindus of the Surat District in respect of agricultural lands ", for the original issues Nos. 2 and 3. I think it can no longer be doubted that this Court has recognised that Hindus in Surat have adopted the Mahomedan law of pre-emption by a long established custom with regard to houses. The only cases which have come before the Courts either from the District of Surat or from other Districts of Guzerat have related to houses and it must be certainly an open question whether Hindus have adopted any law which gives a right of pre-emption with regard to agricultural lands. It even seems doubtful from the

authorities on Mahomedan law whether Mahomedans themselves recognised the right of Mahomodans to pre-emption with regard to agricultural lands. However that may be, it is quite possible that, even assuming the Mahomedans themselves recognised that right, Hindus from the District of Surat recognised that the right of pre-emption, as far as they were concerned, should be confined to pre-emption of houses and it may well have been, considering the uncertainty of Mahomedan law, they did not adopt any such law with regard to agricultural land.

2. It is certainly not advisable, in my opinion, to extend any customary law which is in conflict with the personal law of the parties unless there is evidence that such alien law has been adopted and it is certainly desirable and right that the issue set out by the learned appellate Judge should be tried.

3. I think, therefore, both the appeals fail and should be dismissed with costs.