

(1926) 06 AHC CK 0002
In the Allahabad High Court

Kuar Chandar Shekhar Bux Singh

APPELLANT

Vs

Musammat Bhagwati Devi and Others

RESPONDENT

Date of Decision : 03-06-1926

Acts Referred:

Citation : (1926) 06 AHC CK 0002

Final Decision : Dismissed

Judgement

1. This is a plaintiffs appeal arising out of a suit for pre-emption. In order to prove the custom the plaintiff relied on an entry in the wajib-ul-arz of 1832. The defendant rebutted the presumption arising from this entry by showing that on the 25th of March, 1842, the entire village was transferred to a single owner Debi Singh. This fact was admitted by the plaintiff's own witness Jaswant Singh. On Dabi Singh's death his sons succeeded to the estate and Debi Singh's descendants were in possession of the property at the time of the sale. Having regard to these circumstances the lower Appellate Court has found that it is not proved that a custom of pre-emption exists. The finding is that when Debi Singh became the sole proprietor of the village, in 1842, no custom could exist then and that the history of the village between 1832. and 1872 negated the conclusion that a custom could grow-up in that interval. Prima facie we must accept this finding of the lower Appellate Court.

2. The learned Advocate for the plaintiff, however, contends that the fact that in 1842 there was a single proprietor is by no means conclusive; that a custom would, merely remain in abeyance and would revive as soon as more than one co-sharer came to own that village. Great reliance is placed for this contention on the case of Dalip and Others Vs. Khazan Singh, . The learned Judges who decided that case distinguished that case from the case of Kamrunnissa Bibi v. Sughra Bibi 40 Ind. Cas. 427 : 39 A. 480 : 15 A.L.J. 422 on the ground that in the case before them the village consisted of several tnahals, out of which one mahal had become the property of a single proprietor; whereas in the other case the whole village constituted one mahal. Whether the distinction between the

two cases is or is not legitimate is not for us to consider in the present case because we find that here the whole village constitutes one mahal. The case, therefore, is directly governed by the ruling in Kamrunnissa Bibi's case 40 Ind. Cas. 427 : 39 A. 480 : 15 A.L.J. 422. The case of Beni Prasad v. Sheodin 78 Ind. Cas. 586 : 22 A.L.J. 289 : 46 A. 361 : A.L.R. 1924 All. 425 : L.R. 5 A. 233 Civ. is certainly distinguishable because there at the time of the partition there was a clear provision that the right of pre-emption in favour of the owners in the other mahal shall remain intact. There the custom of pre-emption was not extinguished but was expressly kept alive. The appeal is accordingly dismissed under Order XLI, Rule 11.