
(1946) 01 AHC CK 0030

In the Allahabad High Court

Case No : First Appeal No. 259 and S.A. Nos. 1052 and 1053 of 1943

Ram Charittar Singh and another

APPELLANT

Vs

Tej Prasad Tewari and others and others

RESPONDENT

Date of Decision : 15-01-1946

Acts Referred:

Citation : (1946) 01 AHC CK 0030

Final Decision : Allowed

Judgement

Bennett, J.—These appeals raise the same question, whether a right of pre-emption exists in a village called Pantī, which is described as forming part of Taluqa Dasaon Saltanat, Pargana Atraulia, District Azamgarh.

2. Three suits were brought by residents of this village claiming pre-emption in respect of separate sales. Two of these suits were instituted in the Court of the Munsif and the third in the Court of Civil Judge of Azamgarh. The Munsif dismissed the suits, holding that there was no right of pre-emption in Pantī. The Civil Judge decreed the suit in his Court, holding that there was; and on the same date, 29-4-1943, he allowed appeals from the judgments of the Munsif and decreed both these suits also. Hence the first appeal and two second appeals in this Court.

3. At the settlement of 1873-1874 Pantī was one of a number of villages, 16 in all, comprised in Taluqa Dasaon Saltanat. A lady, the daughter of one Saltenat Singh, is shown in the wajib-ul-arz of that settlement as the absolute owner.

4. The complete wajib-ul-arz is not on the record. All that we have is the first part of it, referring to the whole Taluqa as a mahal consisting of 16 villages, and containing the remark that as there is no cosharer it is unnecessary to record any conditions relating to preemption. There follow appendices for individual villages. Copies of three of these are on the record, Pantī, Jogipur and Hathipur. The appendices are described as wajib-ul-arzes for these mauzas or villages. That of Pantī suggests that there is no right of pre-emption in that village, while

those of Jogipur and Hathipur show that such right exists in them.

5. It is also to be noted that the right in Jogipur and Hathipur could only have been enjoyed by petty proprietors when the wajib-ul-arzes were prepared. Whether there were at the time petty proprietors in the other villages does not appear.

6. The Taluqa is now held by a number of co-sharers and the question for consideration is whether the right of pre-emption should be held to exist in Panti among the superior proprietors.

7. It is conceded that no right of pre-emption is shown by the wajib-ul-arzes to exist in any part of the Taluqa except the two villages of Jogipur and Hathipur, but it is argued that S. 5, Pre-emption Act of 1922 extends the right from part of the mahal to the whole mahal.

8. The first part of S. 5, Agra Pre-emption Act, 1922, runs thus:

(1) A right of pre-emption shall be deemed to exist only in mahals or villages in respect of which any wajib-ul-arz prepared prior to the commencement of this Act records a custom, contract or declaration.

(a) recognizing, conferring or declaring a right of pre-emption, expressly or by necessary implication, whatever its extent and in whatever form it may be expressed.

9. It has been held that the latter words "whatever its extent and in whatever form it may be expressed" imply that even if the right entered in the wajib-ul-arz is limited in its scope and applies either to a limited body of co-sharers or to a limited area, a right in the whole mahal or village is to be deemed to exist. It was so held by Sulaiman A.C.J., in the Full Bench case Riazuddin Vs. Mt. Phula Devi and Another, and also in Lalta Prasad Vs. Chunni Singh and Another, and the same construction was put upon the words in the Full Bench case by Mukherji J. who observed:

The result of the joint application of the two expressions "in respect of" and "whatever its extent" is that if in any mahal as to which a question of right of pre-emption has arisen, there be found to exist a wajib-ul-arz which contained a mention of pre-emption, applicable to any portion of the mahal, by virtue of the rule enacted by the Legislature, a right of pre-emption would be deemed to exist throughout the whole mahal.

10. The third Judge, in the Full Bench case, King J., did not touch in his judgment on this point but concurred generally in the conclusions of the other learned Judges.

11. But for these decisions I must confess that I should have felt some doubt on the point, for, it would seem that if the Legislature had intended this result it could have expressed its intention much more clearly by enacting that "a right of pre-emption shall be deemed to exist for all co-sharers or petty proprietors in the

whole of any mahal or village in respect of which etc...." Without some such words it would, I think, be possible to construe the expression "whatever its extent" as meaning that the right shall exist to the extent recognized, conferred or declared in the wajib-ul-arz, whatever that extent may be. The other expression "in whatever form it may be expressed" has no bearing to my mind on the question of extent.

12. It may no doubt be argued that sub-s. (3) of s. 5

Where any right or custom referred to in sub-s. (1) has been recorded in respect of any village or mahal, and such village or mahal has, been partitioned, a right of pre-emption shall be deemed to exist in all the portions into which such village or mahal has been divided.

supports the view taken and I agree that there is some force in this argument, but I do not think it is conclusive. It certainly seems a little surprising that where a wajib-ul-arz indicates the existence of the right only among Mohammadans, for instance, the legislature should have extended it to Hindus also. In such a case there would be no difficulty on partition in confining the right to Mohammadans, nor, where the preemption area in the mahal or village was limited, should there be any difficulty on partition in confining the right to the portions into which the whole area subject to the right is divided.

13. On the other hand, it may be said that the purpose of the enactment was to simplify the law and base the right primarily on the fact that the persons concerned are cosharers, of whatever creed or caste, and not relations, relationship only entering into the matter where more persons than one of, the same class (of the five classes specified in S. 12) claim pre-emption.

14. But, so far as we are concerned, this question must be regarded as only of academic interest, it having been held by the Full Bench that where a right of preemption is allowed to any extent in a wajib-ul-arz prepared before the Act of 1922 came into force it extends to the whole mahal or village in question and for the same reason we should not be justified in holding that because the right declared in the wajib-ul-arz relates only to inferior proprietors the superior proprietors do not also under S. 5 enjoy; the right. To justify such a view we should have; to give a purely territorial significance to the word "extent".

15. This being the legal position as regards the effect of S. 5, we may now see how the particular question which arose in these cases was dealt with by the Munsif and the Civil Judge. The Munsif thought the composite wajib-ul-arz "a curious document", and the evidence before him indicated in his opinion that no separate wajib-ul-arz was prepared for Panti, there being only a provision that the conditions laid down for the mahal as a whole would govern Panti also. With regard to this, we may say that we were shown a document which we understood to be a wajib-ul-arz of this village, but the names of some of the villages in this mahal are by no means clearly written and the printed record shows that mistakes have been made in consequence in translation. But this is

immaterial as it is not disputed that what is said for the mahal as a whole, excluding Jogipur and Hathipur applies to Panti.

16. The Munsif proceeded to say:

It was contended by the learned counsel for plaintiffs that the wajib-ul-arz of village Jogipur will govern Panti as it is an appendix and as such must relate to all the villages comprised in mahal Dasaon Saltanat. This argument, if accepted, will lead to great confusion. If the wajib-ul-arz of village Jogipur, being an appendix, applied to all the villages then the entry regarding mahal Dasaon Saltanat, which is to the effect that the village, being zamindari of a single proprietor, no record regarding pre-emption was necessary, will become meaningless.

The Munsif then referred to the fact that Panti itself became a separate mahal at the Settlement of 1307 F. (1900 A.D.), but he said that as no wajib-ul-arz was prepared for it at that Settlement the wajib-ul-arz prepared prior to the Act would have settled the question had it provided for the right of pre-emption.

17. The Civil Judge relied on the view taken in the Full Bench case as to the construction of S. 5, and also on the explanation appended to sub-s. (2) of this section.

Where any such record is proved the existence of an inconsistent or contradictory record in any other wajib-ul-arz is immaterial.

18. There being a record of the existence of the right in a part of the mahal it followed in his opinion that the right must be held to exist throughout the whole mahal.

19. In the Full Bench case the facts were not at all similar to those of the present case, for the question there was whether, when an existing mahal contains portions of earlier mahals, the wajib-ul-arzes of some of which contain entries recording a right of pre-emption and of others do not, a right can be presumed to exist in respect of the whole of the existing mahal.

20. The Full Bench answered this question in the affirmative, but the Privy Council in AIR 1935 169 (Privy Council) allowed an appeal from their judgment, though not on the ground that this question was answered wrongly, but on the ground that the plaintiff had not proved that he was a cosharer in the mahal. At the same time, they made observations which certainly suggest doubt on some portions of the High Court judgment, though they refrained from making any definite pronouncement as to the propriety of the view taken by the High Court. Their Lordships observed:

The Court of first instance held that the right of pre-emption should be confined to that plot which was pre-emptible, when it formed part of the mahal which recognized the right of pre-emption. That view has not been accepted by the High Court, who find that the entry of the wajib-ul-arz of the mahal favouring the

right of pre-emption should govern the entire land of the composite mahal.

Their Lordships find it difficult to follow the reasoning of the learned Judges. They do not see any valid ground for preferring one entry to the rival entry about the existence or non-existence of the right of pre-emption. Suppose there is a mahal consisting of 1000 acres, in respect of which the wajib-ul-arz contains an entry against the existence of the right of pre-emption. It would, according to the High Court, be open to the proprietors of that mahal to create the right of pre-emption in respect of the entire area by adding to it one acre taken out of an adjoining mahal recognizing the right of pre-emption and thereby making a new mahal of the two plots. There would then be a right of pre-emption in respect of not only one acre but also one thousand acres, which constituted the original mahal, and enjoyed at that time immunity from the restrictions imposed by the law of pre-emption.

We put this supposed case to the learned counsel for the respondent, with the further supposition that a composite wajib-ul-arz was prepared for the new mahal before the Act of 1922, this indicating that there was a right of pre-emption for the one acre and no such right for the remaining 1000 acres, and asked what the resulting legal position would be. He replied that after the commencement of the Act the right would prevail throughout the whole mahal. And certainly on the construction placed by the Full Bench on S.5 I do not think that any other reply was possible.

21. But it seems to me that the facts in the present case distinguish it and that the questions so far considered in this judgment do not really arise. Section 5 refers both to mahals and to villages. A mahal may consist of a single village, and if we were considering such a mahal the observations in the Full Bench case which have been particularly referred to would doubt-less be relevant. But a mahal may include more than one village, as in the present case, and a village may include more than one mahal. What has to be seen under the section is whether the wajib-ul-arz recording the custom is of a mahal or of a village. Where it is of a mahal which forms part of a village I cannot find anything in the section which extends it to the whole village or, where it is of a village, anything which extends it to the whole mahal.

22. The wajib-ul-arzes upon which the right of pre-emption is founded in the present case are of two villages, Jogipur and Hathipur. Learned counsel for the respondents argues that as there is a wajib-ul-arz of the whole mahal which includes these villages it should be held that the right exists in the mahal as a whole having regard to the Full Bench observations. In my view, the general provision for the whole mahal would only govern the separate villages if there was no separate wajib-ul-arz relating to them. But in any event, the claim to pre-empt is not and could not be based on the general provision in this case, for the general provision negatives it. The general wajib-ul-arz is only brought in to assist on the argument that by s. 5 the particular provisions for part of the mahal are substituted for the general provisions. I do not overlook the explanation:

Where any such record is proved the existence of an inconsistent or contradictory record in any other wajib-ul-arz is immaterial,

but I construe this as referring to any other wajib-ul-arz of the same mahal or village. Where the mahal and village are not co-extensive, they should not in my opinion be treated in construing, S. 5 as if they were.

23. The view which I take finds some support from a decision of a learned single Judge of this Court in Mohan Singh and Another Vs. Shiv Charan Singh and Others, This was a converse case to the present; in that the right of pre-emption was shown to exist in a consolidated wajib-ul-arz of a number of villages situated in a particular pargana, while in the wajib-ul-arz of one of these villages it was not shown to exist The learned Judge observed :

In view of the wording of S. 5 the wajib-ul-arz recording a custom, contract, or declaration about the right of pre-emption must be a wajib-ul-arz with respect to the mahal or village in which the property transferred is situated. The wajib-ul-arz relied upon by the plaintiffs does not purport to be a wajib-ul-arz with respect to any particular mahal or to any particular village. On the other hand, it purports to be a consolidated wajib-ul-arz with respect to all the villages in a particular pargana. That wajib-ul-arz is not therefore such a wajib-ul-arz as is contemplated by S. 5, Agra Pre-emption Act.

24. It does not appear that the consolidated wajib-ul-arz in that case was of a single mahal and that may be thought to differentiate the case from the present case, where we have a wajib-ul-arz which purports to be a wajib-ul-arz of a single mahal comprising a number of villages, for some of which there were also separate wajib-ul-arzes.

25. I would rely therefore rather on the argument that in such a case we have primarily to consider the wajib-ul-arz which contains a record of the custom. In the present case that wajib-ul-arz is of a village and not of a mahal and I find no justification in S. 5 for extending the right from a village to a mahal merely because the village has been included in the mahal. Apart from the wording of the section it would certainly seem rather extraordinary that, merely because the revenue authorities have combined a number of villages in one mahal for the purpose of fiscal convenience, the right of preemption prevailing in some of them should be extended to all.

26. For these reasons I think that the view taken by the munsif should be held to be the right view. I would accordingly allow these appeals, restore the munsif's decrees dismissing the suits in his Court, and dismiss the suit in the Court of the Civil Judge, with costs to the appellants in all three cases throughout.

Wali Ullah J.

27. These three appeals are connected and they arise out of three suits instituted to pre-empt the property conveyed by three different sale-deeds executed on different dates in the years 1940 and 1941 of shares in village Panti. Two of the

sale deeds were for Rs. 2000 and Rs. 750 respectively and suits in respect of those deeds were instituted in the Court of the Munsif whereas the third sale deed dated 15-8-1941 was for an amount of Rs. 6401 and the suit in respect of this deed was instituted in the Court of the learned Civil Judge, Azamgarh. Both the suits filed in the Court of the learned Munsif were dismissed by him. On appeal, how-ever, the learned Civil Judge reversed the finding of the learned Munsif on the question of the existence of custom and decreed both the suits on 29-4-1943. The same learned Civil Judge also heard the suit out of which First Appeal No. 259 of 1943 has arisen. He recorded a finding that the right of pre-emption exists in village Panti and decreed the suit with costs on the same day, i.e., 29-4-1943. As the same question with regard to the existence of custom of pre-emption in village Panti is involved in these appeals they have been heard together and are being disposed of by a single judgment.

28. The sole question which has been argued and which has to be decided is whether on a proper construction of the wajib-ul-arz on the record it is to be held that a right of pre-emption exists in village Panti, perguna Atraulia, tahasil Phoolpur, district Azamgarh. It appears that at the time of the settlement for 1873-74 village Panti was one of the sixteen villages included in mahal Dasaon Saltanat which is also described as. Taluqe Dasaon Saltanat. A wajib-ul-arz prepared during the time of the settlement purporting to relate to the entire mahal Dasaon Saltanat is on the record. It is Ex. A-3. The complete wajib-ul-arz of mahal Dasaon Saltanat has not been filed by any of the parties to this litigation. In addition to Ex. A-3 we have on the record another extract which is described as wajib-ul-arz" of mauza Hatipur, Ex. 3. There is also on the record an extract from the wajib-ul-arz relating to villages Jogipur and Bairai. Lastly on the record of second Appeal No. 1053 of 1943 there is an extract from the wajib-ul-arz purporting to relate to village Panti. An examination of these extracts from the wajib-ul-arzes makes it very clear that so far as the entire mahal Dasaon Saltanat is concerned there is no record of any right of pre-emption. The wajib-ul-arz relating to the mahal states that there is only one owner of the entire taluqa or mahal and there is, therefore, "no necessity of recording any conditions relating to pre-emption." The extract from the wajib-ul-arz of village Panti is also worded similarly and there also it is stated that the entire village belongs to one single proprietor and there is no necessity of recording any conditions relating to pre-emption. The extracts from the wajib-ul-arzes of villages Hatipur, Jogipur and Bairai no doubt record a right of preemption. The wajib-ul-arzes relating to individual villages Panti, Jogipur, Bairai and Hatipur appear to be so many "appendices" to the main wajib-ul-arz relating to village Dasaon Saltanat. In view of these entries in the various wajib-ul-arzes the question arises whether it can be said in respect of village Panti that there exists a wajib-ul-arz prepared prior to the commencement of the Agra Pre-emption Act, 1922, which records a right of pre-emption. The learned Civil Judge was of the opinion that the entry recording a right of pre-emption in villages Jogipur and Hatipur which were parts of mahal Dasaon Saltanat must be held to create a right of preemption with

regard to the whole of the mahal of Dasaon Saltanat including the village Panti. The learned Civil Judge has referred to the Full Bench decision of this Court in Riazuddin Vs. Mt. Phula Devi and Another, where it was held :

When an existing mahal contains portions of earlier mahals the wajib-ul-arzes of some of which contain entries recording a right of pre-emption and of the others do not, a right can be presumed to exist in respect of the whole of the existing mahal.

The fact that the wajib-ul-arz relating the village Panti itself has no record of a right of pre-emption was considered by the learned Civil Judge to be immaterial in view of the explanation added to S. 5, Agra Pre-emption Act.

29. Learned counsel for the appellants has, however, contended that in the first place the interpretation put upon the provisions of S. 5, Pre-emption Act by the Full Bench referred to above does not lend any support to the soundness of the view taken by the learned Civil Judge with regard to the interpretation of the wajib-ul-arz in the present case. In the next place it is contended that the correctness of the view expressed by the Full Bench was seriously doubted when the same case went up in appeal to their Lordships of the Privy Council. Our attention has been invited to the decision of their Lordships of the Privy Council reported in AIR 1935 169 (Privy Council) where at p. 976 their Lordships are reported to have observed:

Their Lordships find it difficult to follow the reasoning of the learned Judges. They do not see any valid ground for preferring one entry to the rival entry about the existence or non-existence of the right of pre-emption. Suppose, there is a mahal consisting of 1000 acres, in respect of which the wajib-ul-arz contains an entry against the existence of the right of pre-emption. It would, according to the High Court, be open to the proprietors of that mahal to create the right of preemption in respect of the entire area by adding to it one acre taken out of an adjoining mahal recognizing the right of pre-emption, and thereby making a new mahal of the two plots. There would then be a right of pre-emption in respect of not only one acre, but also one thousand acres, which constituted the original mahal and enjoyed, at that time, immunity from the restrictions imposed by the law of pre-emption.

It must, however, be noted that their Lordships of the Privy Council did not consider it necessary to make any definite pronouncement on the subject as, in their view, it was quite clear that the plaintiff had failed to establish that he was a cosharer in the mahal and on that ground the appeal was decided.

30. The learned counsel for the respondents has, however, strenuously contended that on a proper interpretation of the provisions of s. 5 of the Act it would follow that in a case like the present where there is a right of pre-emption prevalent in one of the several villages comprised in a single mahal the right of pre-emption must be deemed to exist in the entire mahal. He has contended that the expression "whatever its extent and in whatever form it may be expressed"

in s. 5 (1) (a) has been the subject matter of several decisions in this Court and in the light of those decisions, so he contends, it must be held that village Panti is also affected by the right of pre-emption which is recorded in the wajib-ul-arzes relating to villages Hatipur and Jogipur which are component units of the same mahal as village Panti itself is. Learned counsel has conceded that the precise question which arises in the present case did not actually arise in the case decided by the Full Bench and in view of the observations of their Lordships of the Privy Council quoted above he does not propose to take his stand upon the line of reasoning adopted by the Full Bench in Riazuddin Vs. Mt. Phula Devi and Another,

31. I now proceed to consider some of the decisions of this Court which have been cited regarding the interpretation of the expression "whatever its extent and in whatever form it is expressed" in order to see whether they lend any support to the contention of the learned counsel. Yasrab Bano Vs. Zahur Husain and Others, In this case two learned Judges of this Court held:

If there is a record of custom in the wajib-ul-arz providing for pre-emption, whatever the extent of custom may be and in whatever way it may be expressed, there is a right of pre-emption under the Agra Pre-emption Act which can be exercised in respect of a petty proprietary interest.

It was argued in that case that the right of preemption extended only to a sale of proprietary interest. This contention, however, was repelled by their Lordships and it was held that whatever the extent of the custom may be and in whatever way it may be expressed, a right of pre-emption under the Act could be exercised in respect of a petty proprietary interest.

32. Lalta Prasad Vs. Chunni Singh and Another, In this case also two learned Judges of this Court held that:

When a right of pre-emption is recorded in a wajib-ul-arz of the mahal, a right must be deemed to exist in view of the provisions of S. 5 of the Act, and the question as to what persons are entitled to exercise this right is to be determined by reference to S. 12 of the Act and not to the recitals in the wajib-ul-arz.

In this case the wajib-ul-arz recorded a custom of pre-emption but there was a recital in it to the effect that the cosharers of the village had: no concern with the resumed muafi and a part of the resumed muafi land comprised in a khewat had been sold.

33. B. Dallu Singh and Another Vs. B. Chhakan Singh and Another, This is a decision by a Bench of two learned Judges of this Court. Their Lordships had to interpret the entry in the wajib-ul-arz of 1247 Fasli in the village in question. It was held that it recorded a right of pre-emption. Their Lordships went on to observe:

It is immaterial to consider to what extent that right was limited or confined The existence of such a record of rights raises the presumption under S. 5, Agra Pre-

emption Act that a right of pre-emption exists, and that right is to be exercised in accordance with the provisions of Ss. 11 and 12 of the Act.

The plaintiffs and the vendor in that case were recorded as "Manzooridars" and classified as inferior proprietors (malik-i-adna). They were held to be "proprietors" within the meaning of that expression as used in s. 4 of the Act; and the claim was decreed.

34. None of these cases, in my view, lays down any principle which can be invoked by the learned counsel for the respondents in support of his contention. The case in *Shyam Lal Vs. Dwarka Prasad and Others*, and the case in ("29) 1929 A.L.J. 595 : 117 I.C. 106, *Sri Ram Lakshman Janki v. Ram Gopal* were cases in which the decision turned upon the interpretation of the terms of the *wajib-ul-arzes* concerned and it was held that a right of pre-emption was necessarily implied by the language used in the *wajib-ul-arzes* concerned. In the case before us the position in a nutshell is this: The *wajib-ul-arz* of mahal Dasaon Saltanat records no right of pre-emption. This mahal Dasaon Saltanat comprised no less than sixteen villages. Each of the individual villages appears to have a separate *wajib-ul-arz* of its own appended to the *wajib-ul-arz* of the mahal. The *wajib-ul-arz* relating to three of the villages, namely Hatipur, Jogipur and Bairai, no doubt records a custom of pre-emption but the fact remains that the *wajib-ul-arz* relating to village Pant records no such custom. Is there any reason to hold that the right of pre-emption prevailing in three of the villages must govern all the villages comprised in the mahal when the *wajib-ul-arz* of the mahal itself records no right of pre-emption? Furthermore, can it be held that the right of pre-emption prevails in village Pant when neither the *wajib-ul-arz* of the mahal in which village Pant is situate nor the *wajib-ul-arz* of village Pant itself records a right of pre-emption? It seems to me that the answer to both these questions must be in the negative. I find no support either on principle, or in any authority placed before us for the contention of the learned counsel for the respondents. The question whether there is any *wajib-ul-arz* prepared prior to the commencement of the Pre-emption Act which records a custom, contract or declaration with respect to the right of pre-emption in respect of village Pant must necessarily depend upon the proper interpretation of the entries in the *wajib-ul-arz*. In the case before us as mentioned already, the *wajib-ul-arz* of village Pant records no custom. The *wajib-ul-arz* of the mahal of which village Pant is only one of the unit villages also records no custom. It must, therefore, follow that there is no *wajib-ul-arz* in respect of village Pant which records a custom, contract or declaration, with respect to the right of pre-emption. Of the ruling cited before us, the case which in its facts comes very near to the facts of the present case is *Mohan Singh and Another Vs. Shiv Charan Singh and Others*, In that case the *wajib-ul-arz* relied upon by the pre-emptor did not purport to be a *wajib-ul-arz* with respect to any particular mahal or to any particular village. On the other hand, it purported to be a consolidated *wajib-ul-arz* with respect to all the villages in a particular pargana which included the village in which the sale had been effected. The *wajib-ul-arz* of the village itself contained no mention of

the right of pre-emption. It was held that such a wajib-ul-arz was not a wajib-ul-arz as contemplated by S. 6, Agra Pre-emption Act and the record of the custom of pre-emption contained in the consolidated wajib-ul-arz of the pargana could not be made the basis of a finding that a custom of pre-emption prevailed in the particular village.

35. On a careful consideration of the language used in s. 5 of the Act, I can discover no justification for extending the right of pre-emption from a village to a mahal simply because the village seems to be situate within the precincts of a Mahal. Similarly I find no justification for extending the right from one village to another solely on the ground that the two villages happen to be comprised within the ambit of a single mahal.

36. For the reasons given above, I hold that the plaintiffs have failed to establish a right of pre-emption in village Panti.

37. In the result, therefore, I would allow Second Appeals Nos. 1052 and 1053 of 1943, set aside the decrees passed by the learned Civil Judge and restore the decrees passed by the learned Munsif dismissing the suits with costs throughout. I would also allow First Appeal No. 259 of 1943, set aside the decree of the learned Civil Judge, and dismiss the suit with costs throughout.

38. We allow second Appeal Nos. 1052 and 1053 of 1943, set aside the decree passed by the learned Civil Judge and restore those passed by the learned Munsif dismissing the suits with costs throughout. We also allow First Appeal NO. 259 of 1943, set aside the decree of the learned Civil Judge and dismiss the suit with costs throughout.