
(1912) 07 AHC CK 0012
In the Allahabad High Court

Ramhit Misra and Another

APPELLANT

Vs

Chandi Prasad Dube and Another

RESPONDENT

Date of Decision : 30-07-1912

Acts Referred:

Citation : 16 Ind. Cas. 411

Hon'ble Judges : Henry Richards, C.J;Tudball, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit for pre-emption. The evidence in support of the right consisted of a wajib-ul-arz of 1833 and two decrees. The wajib-ul-arz of 1833 records the existence of a right of pre-emption. The first decree was an ex parte decree of 1903. The fact that it was ex parte takes away largely from its significance. It may well have been that the vendee had no desire to retain the property and it is even possible that it was collusive. The second decree was of the year 1904. Looking at the judgment in this case, it appears that the evidence before the Court was the wajib-ul-arz of 1833 and the recent wajib-ul-arz in which the word "nil" appears against the head of pre-emption, and the ex parte decree which we have already mentioned. In the present case, the defendants adduced in evidence the wajib-ul-arz of 1860. That wajib-ul-arz throws quite a new light upon the situation. This clearly records that there has never been any sale or transfer, and that in future the co-sharers can sell to whom they please. As we have held in the previous case, the wajib-ul-arz of 1860, in our judgment, amounts to a negation that any custom of pre-emption existed in the village. It is clearly to be noted that in the decree of 1904, the learned Judge had not the wajib-ul-arz of 1860 before him. His judgment may have been quite right upon the evidence before him. The question before us now is whether or not, upon the evidence as it stands, the Court was justified in holding that the custom of pre-emption existed. In our opinion, the wajib-ul-arz of 1860 negatives any inference that might be drawn from the wajib-ul-arz of 1833, and, for the reasons already mentioned, the decrees are of no value whatever. The Court was, therefore, not justified in holding that the custom existed, and we think that the decree of the

Court of first instance ought to be restored. We accordingly allow the appeal, set aside the decree of the lower Appellate Court and restore the decree of the Court of first instance with costs in all Courts.