
(1929) 02 AHC CK 0020
In the Allahabad High Court

Sri Ram Lakshman Janki and Others

APPELLANT

Vs

Ram Gopal and Others

RESPONDENT

Date of Decision : 25-02-1929

Acts Referred:

Agra Tenancy Act, 1926 — Section 5

Citation : 117 Ind. Cas. 106

Hon'ble Judges : Sulaiman, J; Sen, J

Bench : Division Bench

Judgement

1. This is a plaintiffs' appeal arising out of a suit for pre-emption.
2. On the 29th of June, 1925, Ram Singh, defendant No. 3, sold his zemindari shares in two villages, namely, Bipauri and Gujaini to Ram Gopal and Har Mohan defendants Nos. 1 and 2 for Rs. 300. The plaintiffs claiming to be the co sharers with the vendor instituted the present suit for preemption on the allegation that the real sale consideration was Rs. 200. The Courts below held that the right of pre-emption existed in village Bipauri but the custom of pre-emption was not proved with reference to village Gujaini. The plaintiffs' claim, therefore, for village Gujaini was dismissed.
3. The sole question in this appeal is whether there is a record of pre-emption with reference to village Gujaini within the meaning of Section 5 of the Agra Tenancy Act (Act II of 1922).
4. The plaintiffs rely on a wajib-ul-arz dated the 15th of September, 1873, which recites as follows:--Up to the present time there have been no suits of pre-emption in this village but there is a custom of pre-emption in the surrounding villages (magar gird opesh ka yeh dastur hai etc). The clause gives the details of the order in which the co-sharers are entitled to pre-empt and enumerates that the right of pre-emption belongs firstly to the nearer co-sharer than to pattidars, next to "thokwalas" and lastly to persons residing in the village. The Courts below held on a construction of this wajib-ul-arz that this did not amount to a

record of custom relating to preemption within the meaning of Section 5 of the Agra Tenancy Act.

5. We are of opinion that the point raised in this appeal is concluded by the decision in *Shyam Lal v. Dwarka Prasad* 98 Ind. Cas. 816 : 25 A.L.J. 409 : 49 A. 139 : A.L.R. 1927 All. 277. There can be no manner of doubt that the intention of the co sharers was to have a custom or at least a declaration of a right relating to pre-emption recorded. In order to attract the provisions of Section 5 it was not necessary that this custom or right should be declared in express terms. It is true that there are no words here expressly declaring the right as there are in certain *wajib-ul-araiz* where words to this effect have been, employed:--"yih dastur ham ko manzurhai". The *wajib-ul-arz* lends itself to the construction that the co-sharers "recorded a custom or a declaration, recognizing, conferring or declaring a right of pre-emption...by necessary implication", otherwise there could have been no object in having the clause relating to pre-emption recorded in the *wajib-ul-arz* of Mauza Gujaini. We hold, therefore, that the plaintiffs' claim for pre-emption of the zemindari share in Mauza Gujaini ought to have been decreed.

6. It has been found by the Courts below that Rs. 300 is the real consideration for the sale. The plaintiffs, therefore, are entitled to a decree for pre-emption of the shares in both the villages Bipauri and Gujaini on payment of Rs. 300. We, therefore, in substitution of the decrees passed by the Courts below grant the plaintiffs a decree for preemption of these two villages on payment of Rs. 300 within two months of this date. If a portion of the sale consideration has already been deposited, the plaintiffs will be entitled to deposit the balance within the time indicated above. The plaintiffs are entitled to recover their costs throughout. If the plaintiffs fail to deposit the amount or the balance of the amount within the time fixed by us, the plaintiffs' claim will stand dismissed in all Courts.