# Gokal And Ors. vs Zarif Husain And Anr. on 22 September, 1950

## Equivalent citations: AIR1952ALL148, AIR 1952 ALLAHABAD 148

JUDGMENT

1. This is a vendees' appeal arising out of a pre-emption suit. The trial Court dismissed it. The lower appellate Court decreed it.

2. The only point for consideration is whether the property is pre-emptible. The property sold was described in the sale deed as follows:

> "All my rights and interests in 7 sibams out of 48 sihama out of. 50 acre in khata khewat No. 24 village Lodhi Sarai in the town of Sambhal together with the trees of all kinds within the limits of the Municipality."

3. The Agra Pre-emption Act does not apply to this case because by Sub-section (8) of Section 1 of the said Act the areas included within the limits of the Municipality have been excluded from its purview. The suit was based on custom. In the wajib-ul-arz the provision about custom is as follows:

> "After a co-sharer sells, mortgages or remortgages his haqiyat then he must inform first his nearest co-sharer and upon his refusal other co-sharers If such co sharer does not take the property on payment of reasonable price then the vendor will have a right to transfer it to anyone whom he may wish."

It is clear from the above that according to the above entry in the wajib-ul-arz a right of preemption arises only when a hiqiyat is sold. Learned Munsif has found that the property which was sold in the present case consists only of abadi land. This finding has not been reversed by the learned Civil Judge nor has learned counsel for the respondents placed before me any materials to show that these findings of the trial Court are erroneous. The question is whether the word "haqiyat" includes abadi site or not. In the Full Bench case of Iskri v. Thakur Din, 1882 ALL. w. N 192 it was held by the majority of the Full Bench that the word "hagiyat" does not include land occupied by houses. This view was followed in a later case, viz., Rup Ram v. Mangni, 1886 ALL W. N. 136 in which it was re-affirmed that abadi land does not fall within the term "haqiyat". Learned Civil Judge has referred to Bawa Singh v. Lachman Singh, 10 Ind. cas. 850 (Lah) in which it was held that though the word "haqiyat" is as a rule used in connection wish landed property there is nothing to prevent is application to house property also. But this was a decision of the Punjab Chief Court and it is not possible to follow it in the face of the Fall Banch decision of this Court in Ishri v. Thakur Din,

4. In short the position is that according to the wajib-ul-arz the right of pre-emption arises only when there is a sale of haqiyat. As the word "haqiyat" has been interpreted rot to include abadi site and what has been sold in the present case is only abadi site the plaintiff has, therefore, no right of pre-emption. The decision of the trial Court was correct.

5. The appeal succeeds and it is hereby allowed with costs. The decree of the Civil Judge is set aside and that of the trial Court is restored. Leave for Letters Patent appeal was asked for but was refused.