

Balwant Singh And Ors. vs Umrao Singh And Ors. on 6 April, 1950

Equivalent citations: AIR1952ALL334, AIR 1952 ALLAHABAD 334

JUDGMENT

Agarwala, J.

1. This is a defendants' appeal arising out of a suit for pre-emption. The only point urged is whether the custom of pre-emption existed in the mahal in suit.

2. The property in dispute is in patti jatan mahal muddlehem. In this mahal muddlehem there is another patti harnam. Now this mahal muddlehem came into existence in a partition held in the village in the year 1893. In the year 1882, there was a settlement in the village called the settlement of Munshi Nasir Ali. At that time there were three pattis in the village. It does not appear that there was any mahal. These pattis were known as patti jatan, patti Brahmanan and patti bhagwan. There were two wajib-ul-arzes. One wajib. ul-arz was for the entire village, Ex. 2. In this wajib-ul-arz, the custom of pre-emption was recorded. There was a separate wajib ul-arz for patti jatan. In this wajib-ul-arz, it was mentioned that the proprietor, who was the sole proprietor of the entire patti, had a right to transfer the property to any one he liked. No specific mention of a right of pre-emption was, however, made. But inference could be drawn that there was no right of pre-emption. Obviously if there was no right of pre-emption in this patti, the entry in wajul-ul-arz, Ex. 2 of the entire village that there was a right of pre-emption in the entire village was not wholly correct. There was no separate wajib. ul-arz prepared at the time of the partition of 1893.

3. The question for determination is whether after the partition of 1893 a right of pre-emption would be deemed to prevail in patti jatan, mahal muddlehem. This patti jatan may, for the purpose of this case, be taken to be the same as patti jatan of the previous settlement, although there is no specific evidence to that effect.

4. Section 5, Agra Pre-emption Act, states:

"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" (regarding pre-emption). . . ."

This is Sub-section (1). Then there is Sub-section (3) which provides:

"Where any right or custom referred to in Sub-section (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. "

5. I think the present case clearly falls within the provisions contained in Sub-section (3). Here was a right of pre-emption recorded in respect of the entire village in the year 1882. This village was partitioned. Then, according to Sub-section (3), the result is that a right of pre-emption shall be deemed to exist in all portions into which the village has been divided. Mahal muddlehem is one of those portions. Therefore, a right of pre-emption shall be deemed to prevail in Mahal Muddlahem. If the right prevails in mahal muddlehem it prevails in patti jatan also, which is a portion of Mahal Muddlehem.

6. A similar point arose for decision in a Full Bench of this Court in Riaz Uddin v. Phula Devi, 1929 ALL. L. j. 1212. In that case one mahal was formed out of portions of several earlier mahals. The wajib ul-arzes of some of these earlier Mahals contained entriea recording a right of pre-emption. The others did not. Their Lordships held that, the right of pre-emption shall be deemed to exist in respect of the entire existing mahal although it contained portions of mahals in which there was no right of preemption.

7. Similarly, in the present caae, even though the present Mahal Muddlehem contains a portion of an earlier patti in which there was no right of pre emptio, yet because there was a right of pre-emption in respect of patti harnam, whioh formed part of other pattis of the village in which there was a right of pre-emption, this right of pre emptio shall prevail in the entire mahal including patti jatan.

8. The decision of the Court below was perfectly correct. There is no force in this appeal and I dismiss it with costs.

9. Leave to appeal under the Letters Patent is refused.