

Jawala Shanker Sahai Vs. Bohra Sri Ram and ors.

LegalCrystal Citation : legalcrystal.com/462361

Court : Allahabad

Decided On : Jan-10-1930

Reported in : AIR1930All729

Appellant : Jawala Shanker Sahai

Respondent : Bohra Sri Ram and ors.

Judgement :

Sulaiman, J.

1. This is a defendant's appeal arising out of a suit for preemption. The plaintiff relied on an extract from a wajibularz, and neither he nor the defendants filed a complete khewat to explain the constitution of the village. A complete khewat has now been produced under our direction.

2. The property sold is situate within the municipal limits of Jalesar, and as held under the order, dated 27th May 1927, the Act does not apply to it and the case is governed by the customary law if any.

3. The property sold consists of a share in a milak consisting of resumed muafi lands. An examination of the khewat makes it quite clear that the body of cosharers, whose names are shown against serial number 1, own the entire 20 biswas in the mahal. After them come proprietors, who own these milaks and who are serially numbered but against their properties no fractional share is entered in the column of shares. It is therefore quite clear that these proprietors do not own any fractional share in the 20 biswas of the mahal and therefore are not cosharers in the mahal.

4. Merely because the printed heading of the claim has stated 'Name of patti or khewat,' the Court below has assumed that all these other proprietors own property in separate pattis. This is a wholly erroneous assumption. A patti is a sub-division of a mahal in an imperfect partition and represents distinct fractional part of a mahal. This is not the case here. These proprietors are not cosharers in the patti at all.

5. The translation of the entry in the wajibularz on which the plaintiff relies, is given by the learned District Judge, and it is clear that a partner in the property can only have a right of pre-emption and if he also happens to be a brother, a nephew or a cousin but if he is not any such relation, he must be a hissedar patti. As remarked above, the plaintiff is not a hissedar or a cosharer at all, and has therefore no right to sue under the alleged custom: vide Radha Kishun v. Abbai Begum [1921] 19 A.L.J. 859.

6. In the result we allow the appeal, set aside the decree of the lower appellate Court

and dismiss the plaintiff's suit with costs in all Courts including fees in this Court on the higher scale.

LegalCrystal - Indian Law Search Engine - www.legalcrystal.com