

that "the privilege of Shaffa is established after sale, and the right of the Shaffee is not established until after demand be regularly made, &c." These and similar passages imply only that a complete title to claim the right of pre-emption accrues only on completion of sale, when the former owner's interest in the property has ceased, but the right itself would seem to spring out of a rule of Muhammadan law enacted in the interest of neighbours, and which would seem to be binding only on all those owners being vendors of property who are subject to Muhammadan law, and who necessarily hold their property subject to this rule of law, which will affect them and the property wherever a sale takes place to bring the rule of law into operation.

I concur in the view taken in *Pooroo Singh v. Hurry Chattrn Surmah* (1). I would reply that the Muhammadan law of pre-emption does not apply to the case referred.

APPELLATE CIVIL.

1878
 DWARKA DA
 v.
 HUSAIN
 BAKSHI.

1878
 January 23.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Turner.

MARATIB ALI (PLAINTIFF) v. ABDUL HAKIM AND OTHERS (DEFENDANTS).^{*}
Pre-emption—Contract—Muhammadan Law—Custom—Wajibularz—Special Appeal

Where the existence in a certain village of the right of pre-emption was recorded in the village administration-paper as a matter of agreement and not of custom, and a suit was brought to enforce such right founded on the agreement, and was tried and determined in the lower Courts as so founded, the plaintiff could not in special appeal claim such right as a matter of custom in virtue of the entry (2).

A claim to the right of pre-emption founded on a special agreement does not exclude a claim to such right founded on Muhammadan law (3).

THIS was a suit to enforce a right of pre-emption in respect of a share in a certain village, the suit being founded on an agreement contained in the village administration-paper and on the Muhammadan law of pre-emption. The Court of first instance dismissed the suit on the ground that the administration-paper was not signed by the vendor and the agreement was consequently not binding on him, and on the further ground that the plaintiff had not fulfilled

^{*} Special Appeal, No. 571 of 1877, from a decree of Rai Shankar Das, Subordinate Judge of Saharanpur, dated the 20th February, 1877, affirming a decree of Muhammad Imdad Ali, Muassif of Saharanpur, dated the 21st December, 1876.

(1) 10 B. L. R., 117.

(2) See also *Chudami Lal v. Muhammad Baksh*, 1 A. L. R., 1 All., 563,

and note to that case.

(3.) See also *Nekchul v. Than Singh*, L. C. R., N.-W. P., 1870, p. 222.

1878

MARATIB ALI
v.
ABDUL
HAKIM.

the conditions of the Muhammadan law of pre-emption. On appeal by the plaintiff the lower appellate Court also held that the claim on the agreement was unmaintainable as the vendor had not signed the administration-paper, and held also that the claim on the agreement excluded the claim based on Muhammadan law.

The plaintiff appealed to the High Court contending that the claim on the administration-paper did not exclude that based on the Muhammadan law; and that the mere fact that the vendor had not signed the administration-paper did not affect the claim thereon, the administration-paper being only a record that the custom of pre-emption prevailed.

Munshi *Hanuman Prasad*, for the appellant.

Babu *Oprokash Chandar*, for the respondents.

The Court made the following

ORDER OF REMAND.—The second plea is over-ruled because it was admitted that the existence of the right of pre-emption was entered in the record as a matter of agreement and not of custom, and on these averments the suit has been tried and the issues fully investigated; but the validity of the first plea must be admitted. The claim based on the *wajibularz* did not exclude a claim under Muhammadan law. The lower appellate Court must determine whether the appellant had under the Muhammadan law the right of pre-emption, and secondly, if he had the right, whether he duly performed the conditions which, under the Muhammadan law, are essential to the validity of the right, namely, the immediate expression of his intention to purchase and immediate demand.

Cause remanded.

1879
January 24.

FULL BENCH.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spackie, and Mr. Justice Oldfield.

MAKUNDI LAL (PLAINTIFF) v. KAUNSILA (DEFENDANT).*

Sale in Execution of Decree—Right of Auction-purchaser to recover purchase-money on the sale being set aside—Fraud on the part of Decree-holder—Fraud on the part of Auction-purchaser—Minor—Costs.

A decree-holder fraudulently caused the sale in execution of his decree of certain immovable property belonging to a minor. The minor brought a suit for a declara-

* Appeal No. 4 of 1876 under cl. 10, Letters Patent.