

APPELLATE CIVIL.

Before Sir Grimwood Mears, Knight, Chief Justice and
Mr. Justice Lindsay.

1925
October, 28.

ABDULLAH (DEFENDANT) v. BADR-UL-ISLAM
(PLAINTIFF).*

*Wajib-ul-arz—Construction of document—Landlord and tenant
—Right of transfer of houses—“ Pukhta house ”.*

Held, on a construction of the provisions of a *wajib-ul-arz* dealing with the rights of tenants regarding transfer of houses, that the adjective “ *pukhta* ” was not necessarily confined to houses made of kiln-baked bricks, but would include a substantially-built house made of sun-dried bricks.

THE facts of this case were as follows :—

In the year 1910 a bania residing in the town of Jahangirpur in the Bulandshahr district sold to the defendant a house described as a “ *dukan kham* ” or *kachcha* shop. Some years afterwards the zamindar sued the purchaser under the provisions of the *wajib-ul-arz* for ejection of the purchaser, for demolition of the shop and for clearance of the site.

According to the *wajib-ul-arz*, upon which the plaintiff founded his suit, the inhabitants of the town of Jahangirpur were divided into two classes, the first consisting of persons who were described as “ *qaum sharif* ” or respectable classes, and the second consisting of agriculturists and others. Persons of the first class had a right to transfer “ *pukhta* houses which they have built at their own expense.” The right of transfer was expressed to be a right to transfer the houses as they stood. And it was expressly stated that the zamindars of the village had no right whatever to interfere with this privilege of people who belonged to the “ *sharif qaum* ”. In the case of the ordinary “ *riaya* ” and lower classes inhabiting the town it

1925

ABDULLAH
v.
BADR-UL-
ISLAM.

was provided that they had no right to transfer their houses although they might sell the materials thereof. Neither class of resident had any right to transfer the sites of their houses.

The first court decreed the plaintiff's claim.

The lower appellate court reversed this decision and dismissed the suit, being of opinion that the defendant's vendor belonged to the privileged class and had a right to sell the house. The plaintiff appealed to the High Court and his appeal was decreed. The defendant then preferred the present appeal under section 10 of the Letters Patent.

Maulvi *Muhammād Abdul Aziz* for the appellant.

Maulvi *Iqbal Ahmād* and Maulvi *Mukhtar Ahmad* for the respondent.

The judgement of the Court (MEARS, C. J., and LINDSAY, J., after setting forth the facts as above, thus proceeded:—

It has been argued before us that the learned Judge of this Court has placed too narrow an interpretation upon the language of the *wajib-ul-arz*. He has, it seems, definitely laid down that the power of transfer which is vested in members of the respectable class in this town is limited to cases in which the houses being transferred are what is properly known as *pacca* houses, that is to say, houses which have been built of kiln-dried bricks.

In the present case it is proved that the building is not a building which has been built of what is ordinarily known as *pacca* bricks. It is a building which has been constructed with sun-dried or *kachcha* bricks. In spite of this, however, the first appellate court held that the terms of the *wajib-ul-arz* applied to this building on the ground that it was a building

of a substantial character. The Subordinate Judge thought that the expression “ *pukhta* ” did not necessarily imply that houses to which the term was applied were houses built of kiln-dried bricks.

1925

 ABDULLAH
 v.
 BADE-UL-
 ISLAM.

He also referred to the evidence on the record to show that a considerable number of transfers of buildings of this description had taken place without the right of transfer being questioned by the landlord. He was undoubtedly entitled to refer to this evidence for the purpose of showing the sense in which the expression “ *pukhta* ” is used in this town of Jahan-girpur.

It appears to us, after listening to the arguments of the learned counsel, that the learned Judge of this Court has placed too narrow a construction on the expression “ *pukhta*, ” and we think that the better sense was arrived at by the first appellate court.

Taking the language as it stands in the context, we are of opinion that the interpretation adopted by the first court of appeal is more appropriate than that which found favour with the learned Judge of this Court. In the circumstances, therefore, we are of opinion that this appeal ought to be allowed, that the decree of the learned Judge of this Court should be discharged and that the decree of the first appellate court should be restored. We direct accordingly and also direct that the appellant do get all his costs in this Court.

Appeal allowed.