

of the Municipal Act is to punish a breach of a notice under that section, such breach having been completed at the time of conviction and that punishments to take effect in the future in the event of any future breach are not warranted by law.

A. N. C.

Revision accepted.

Case remanded.

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Fforde.

HARCHARAN DAS (DEFENDANT) Appellant

versus

MALAWA RAM (PLAINTIFF) } Respondents.
AND ANOTHER (DEFENDANT) }

1926

Feb. 4.

Civil Appeal No. 118 of 1922.

Punjab Pre-emption Act, I of 1913, section 3 (3)—Adampur, tahsil Jullundur—whether a town.

Held, that the lower Courts had rightly decided on the material before them that Adampur is a town for the purposes of the Punjab Pre-emption Act.

Second appeal from the decree of Lt.-Col. J. Frizelle, District Judge, Jullundur, dated the 20th October 1921, affirming that of M. Jalal-ud-Din, Munsif, 1st Class, Nawanshahr, district Jullundur, dated the 13th June 1921, awarding the plaintiff possession by pre-emption of the house in dispute, etc.

BADRI DAS, for Appellant.

M. L. PURI, for JAGAN NATH, AGGARWAL, for Respondents.

1926

HARCHARAN
DAS
v.
MALAWA
RAM.

JUDGMENT.

BROADWAY J.—The point for decision in this second appeal is whether Adampur is a town for purposes of the Pre-emption Act. The Courts below have granted the respondent Malawa Ram a decree for pre-emption of a house situate in Adampur, having held that Adampur was a town.

In this second appeal Mr. Badri Das has contended that the conclusion arrived at by the Courts below was not warranted. No definition of a town is given in the Pre-emption Act beyond what is contained in section 3 (3), which is to the following effect :—

“ For the purposes of this Act a specified place shall be deemed to be a town (a) if so declared by the Local Government by notification in the official Gazette, or (b) if so found by the Courts.”

It does not fall within (a) but it appears that in a suit, not between the present parties, decided on the 31st May 1916, Adampur was held to be a town. The Courts below have found that Adampur possesses a police station, a telegraph office and post office, a veterinary hospital and a civil hospital, a middle school and two girls' schools and two bazars with *pacca* pavements and that it is also a commercial centre. For these reasons Adampur has been held to be a town for purposes of the Pre-emption Act. Mr. Badri Das has urged that the Courts below have ignored the question as to what the inhabitants of Adampur do for their livelihood, and has urged that in the main they depend on agriculture. Sitting as a Court of second appeal we cannot examine the evidence on the record. The facts found as enumerated above by the Courts below certainly lend support to the view that Adampur is a town, and it was undoubtedly for

the appellant-vendee to show that the inhabitants depend in the main on agriculture. After a consideration of the arguments advanced at the Bar I am unable to see any reason to differ from the view taken by the Courts below, and therefore dismiss this appeal with costs.

FFORDE J.—I agree.

C. H. O.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Addison.

SINGH RAM (PLAINTIFF) Appellant

versus

KALA AND ANOTHER (DEFENDANTS) Respondents.

1925

Dec. 21.

Civil Appeal No. 1490 of 1925.

Custom—Village cesses—Kurhi Kamini—definition of—House or ground rent—Punjab Tenancy Act, XVI of 1887, section 77 (3) (j)—Suit for declaration—by owner of house that he is not liable to pay it—Jurisdiction—of Civil Courts—Onus probandi—Wajib-ul-arz—entries in—value of.

Held, that *Kurhi Kamini* cannot be taken to mean a tax designed to show the overlordship of the proprietors of agricultural land as against all other residents of the village, but is a cess of the nature of house or ground rent (and not a hearth tax) and that a suit for a declaration that such dues were not recoverable from owners of their own houses did not come within clause (j) of section 77 of the Punjab Tenancy Act, but could be brought in the Civil Courts although the *Lambardars* could sue in the Revenue Courts for the recovery of the cess.

Rattigan's Digest of Customary Law, para. 248 (f), and *Fazal v. Samandar Khan* (1), referred to.

Dewak Ram v. Kour Pirthi Sing (2), *Natha v. Jai Ram* (3), and *Sheikh Muhammad v. Habib Khan* (4), followed.

Raj Sarup v. Hardawari (5), disapproved in part.

(1) 49 P. R. 1891.

(3) 21 P. R. 1888.

(2) 74 P. R. 1879.

(4) 67 P. R. 1905.

(5) 95 P. R. 1907.