

Special Appeal No. 342 of 1969.

1869
Sep. 30.

Gordhandas Girdharbhai *Appellant.*

Frankor, Widow of Damodhar, *et al* *Respondents.*

Preemption amongst Hindus—Custom of Gujrat.

The existence of a local custom as to the right of pre-emption among the Hindus of Gujrat recognized.

Such a custom, where it exists, is regulated by the rules and restrictions of the Muhammadan law.

This was a Special Appeal from the decision of C. G. Kemball, Judge of the District of Surat, in Appeal Suit No. 80 of 1869, confirming the decree of the Sadr Amin of Broach, in Original Suit No. 480 of 1868.

The plaintiff instituted his suit to establish his right of preemption in respect of a house sold by his neighbour, the first defendant, to the defendant No. 2; to obtain possession of the same on payment of Rs. 399; and also to obtain a decree declaring the deed of sale executed between the two defendants to be null and void.

The defendants pleaded, *inter alia*, that the suit was barred by the usage of the country; that, they being Hindus, the rules of Muhammadan law did not apply to them; and that, as a matter of fact, an offer had been made to the plaintiff and declined by him.

The Sadr Amin decreed against the plaintiff, on the ground that he had himself neglected to secure his right of preemption.

The Judge found that the evidence of the witnesses produced by the plaintiff did not amount to proof of the custom set up by him; but, recognizing such a custom for the sake of argument, he was of opinion that the plaintiff had failed to comply with the requirements of the Muhammadan law preparatory to his demand for the enforcement of his claim.

The Special Appeal was argued before GIBBS and MELVILL, JJ.

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Nanabhai Haridas and *Shantaram Narayan* for the
appellant.

Gordhandas
Girdharbhai

Dhirajlal Mathuradas and *Girdharlal Dayaldas* for the
respondents.

Prankore, widow
of Damodhar,
et al.

PER CURIAM:—We find that the District Judge was in error in holding that no such local custom as the right of preemption exists among Hindus in Gujarat. There have been many cases disposed of in the Surat and Broach Adalats, and upheld by the late Sadr Divani Adalat, in which the custom is admitted. *Narun Nursuce v. Premchand Wullubh (a)* is a case in point. The custom exists also in the Bengal Presidency (Sec. 7 Cal. S. D. A. Rep. 129, and many other cases quoted in Morley's Digest vol. I. p 537, para 11). There is no doubt that the custom in Gujarat is the Muhmadan right of preemption, or *hak shafi*, and therefore that in deciding such a suit as the present it is to the particulars of that law we must look for guidance. In the present case the District Judge, adopting the decree of the Court of first instance, found that the original plaintiff not only did not comply with the requirements of that law, but he also held that he refused the purchase when offered. We must therefore confirm the decrees of the Lower Courts, throwing out the plaintiff's claim with costs.

Decree confirm

(a) 9 Harrington, p. 591.