

Har Narain

Vs

Chandgi and Others

Civil Appeal No. 4009 of 1982

(O. Chinnappa Reddy, G. L. Oza JJ)

09.01.1987

ORDER

1. In view of the judgment of this Court in *Atam Prakash v. State of Haryana* [(1986) 2 SCC 249], this appeal has to be allowed and the suit for pre-emption has to be dismissed. The learned counsel for the respondents, however, urges that four of the persons who purchased the property along with the appellant Har Narain have not chosen to prefer the appeal and suit therefore cannot be dismissed in toto. It is difficult to agree with this submission. The purchase was a joint purchase and if the suit for pre-emption was filed against all the joint purchasers, the other joint purchasers are also parties before us though they have not preferred an appeal. If the suit which is one for pre-emption against all the joint purchasers is to be dismissed against one, it has to be dismissed against all. We do not see any difficulty in setting aside the decree passed against the non-appealing joint vendees also under the provisions of Order 41 Rule 33. The appeal is therefore allowed. No costs.

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