

ALLAHABAD HIGH COURT

Kundan Lal

Vs.

Amar Singh

(Sulaiman and Banerji JJ)

29.04.1927

JUDGMENT

Banerji JJ.

1. This is a defendant's appeal arising out of a suit brought by rival pre-emptors for a division of property with the contesting defendant. On the 9th August 1923, certain vendors sold the property to certain vendees. Kundan Lal, the contesting defendant brought a suit for pre-emption against the vendees and obtained a decree on the 14th March 1924. He obtained possession under the said decree. The present plaintiffs, who are eight in number, brought the present suit on the 19th July 1924, for a share in the property so pre-empted. The defendant contested that, inasmuch as he was a co-sharer and had acquired the property prior to the present suit, Section 20 was a bar to the plaintiffs' claim. The Court of first instance acceded to this contention and dismissed the suit, but the lower appellate Court has come to a contrary conclusion.

2. It cannot be doubted that before the passing of the Agra Pre-emption Act the mere fact that a rival pre-emptor had obtained a decree for pre-emption did not prevent other rival pre-emptors from claiming a share in the property as against him, provided their suit was instituted within one year from the sale. In the case of *Raj Narain v. Dunya Pande*¹ it was pointed out that a right of pre-emption was not a right of repurchase but a right of substitution for the original vendee, and that under the decrees in favor of the rival pre-emptors there has not been any fresh transfer in their favor, but they have been put in the places of the original vendees.

3. In our opinion that law has in no way been altered by the new Act. Section 4, Sub-clause (9) embodies the principle that the right of pre-emption is not a right of transfer but a right of substitution. Under Section 13, when two or more persons claiming pre-emption are equally entitled, the property shall be equally divided between them, each paying an equal share of the consideration for the transfer. It matters little who comes to Court first, provided that they all come within the period of limitation. Section 20 of the Act cannot apply to the case where one rival pre-emptor has obtained a decree for pre-emption first. The expression where the purchaser

has transferred the property in dispute to a person having a right of pre-emption, etc. cannot cover the case of a pre-emptor obtaining a decree for pre-emption for, as pointed out by us, that is not a case of a transfer by the vendee to the pre-emptor, In our opinion, therefore, the view taken by the learned District

¹[1910] 32 All. 340

Judge was correct and the present plaintiffs are entitled to their proportionate share in the preempted property.

4. Kundan was one of the claimants. The present plaintiffs, who are eight in number are also claimants. These latter are, therefore, entitled to eight-ninths of the property sold under the deed of 9th August 1923, on payment of eight-ninths of the sale consideration. The appeal is accordingly dismissed with costs including in this Court fees on the higher scale

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