

## Bohra Ganga Prasad Vs Pooran and Others

**Court:** Allahabad High Court

**Date of Decision:** July 15, 1927

**Citation:** 108 Ind. Cas. 157

**Hon'ble Judges:** Sulaiman, J; Banerji, J

**Bench:** Division Bench

### Judgement

1. This is an appeal by one of the defendants Bohra Ganga Prasad arising out of a suit for pre-emption. Bohra Ganga Prasad was the mukhtar-am

of the vendor and took part in the proceedings relating to the sale of the 1st of February, 1922, to the vendee. Subsequently he purchased part of

the property sold to the vendee under a sale-deed, dated the 7th of March, 1922. The vendee was a stranger to the mahal and the plaintiffs had

undoubtedly preference as against him. Ganga Prasad, however, is a co-sharer and is on equal footing with the plaintiffs who have no preferential

right as against him. The suit was instituted after Ganga Prasad had acquired part of the property from the vendee.

2. The Courts below have held that Ganga Prasad on account of his having taken part in the negotiation relating to the sale, is estopped from

resisting the plaintiffs' claim. In our opinion this view is wholly incorrect. In the first place, it is doubtful how far a mukhtar-am can be personally

bound by what he is doing under instruction of his principal, but assuming that Ganga Prasad has disqualified himself from pre-empting the sale to

the vendee, it does not follow that he has also disqualified himself from resisting a claim for preemption against him after he has purchased a part of

the property. In our opinion there can be no estoppel as against Ganga Prasad. He is entitled to say that the property has now come into his hands

and that he being a co-sharer, the plaintiffs have no preference over him. This point is fully covered by the case of Liakat Husain v. Rashid-ud-din

29 A. 125 at p. 128; 3 A.L.J. 794; A.W.N. (1906) 313 where it was held that the mere fact that the defendants were parties to the original sale did

not preclude them from setting up the re-vesting of that property in themselves by a genuine sale before the date of the suit, as a complete answer

to the plaintiffs' claim.

3. We accordingly set aside the decree of the Courts below but before disposing of the appeal finally send down the following issue to the lower

Appellate Court for determination:

1. What is the proportionate price which the plaintiffs must pay for preempting the property other than that which has been acquired by Ganga

Prasad ?

On receipt of the finding the usual ten days will be allowed for filing objections.