

**(1931) 06 AHC CK 0016**

**Allahabad High Court**

**Case No:** None

Ram Raj Pandey

APPELLANT

Vs

Har Prasad and Others

RESPONDENT

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**Date of Decision:** June 11, 1931

**Citation:** AIR 1932 All 249

**Hon'ble Judges:** Sulaiman, Acting C.J.

**Bench:** Division Bench

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### **Judgement**

Sulaiman, Ag. C.J.

1. This is a plaintiff's appeal arising out of a suit for preemption. The plaintiff had acquired some property and became a cosharer by virtue of a sale deed within 12 months of the sale deed in question. Before the suit was filed there was a compromise decree under which his rights as a cosharer were finally confirmed. The claim was resisted on the ground that the plaintiff's suit as cosharer at the time of the sale deed was not determined and his title was inchoate and that therefore he was not entitled to maintain the suit. The argument is that the plaintiff must establish that from the time of the sale deed till the time of the passing of the decree he all along had an indefeasible interest as a cosharer.

2. It seems to us that it is not for the Court to start any such inquiry. If the plaintiff had been given a chance he might well have shown that the other interested cosharers had acquiesced in the sale and they had been estopped from claiming pre-emption. In addition to this the latter portion of Section 19 itself contemplates that a right of pre-emption may be lost after the passing of the first Court's decree and nevertheless his right of suit would subsist. If the plaintiff had the status of a cosharer up to the time the first Court passed its decree, he would be entitled to maintain the suit. It is not necessary for him to establish further that no suit to challenge his claim could have been brought. Had a suit been brought against him and decreed before the first Court passed its decree, the position would of course have been different.

3. The plea of estoppel raised in the trial Court was not substantiated by any evidence and does not appear to have been pressed before the lower appellate Court and could not be pressed as the defendant did not lead any oral evidence at all.

4. We think that the view taken by both the Courts below that the plaintiff had no right to sue was wrong.

4. We accordingly allow this appeal and setting aside the decree of the Courts below decree the plaintiff's claim for pre-emption of the property claimed on payment of Rs. 175 within two months from this date. In case the amount is paid within the time allowed the plaintiff will have his costs in all Courts. If the amount is not deposited within the time fixed the suit shall stand dismissed with costs in all Courts.