

(1939) 10 AHC CK 0014

Allahabad High Court

Case No: None

Seth Chunni Lal

APPELLANT

Vs

Ram Prasad and Others

RESPONDENT

Date of Decision: Oct. 4, 1939

Acts Referred:

- Agra Pre-emption Act, 1922 - Section 12(1), 12(3)

Citation: AIR 1940 All 90 : (1939) 9 AWR 815

Hon'ble Judges: Iqbal Ahmad, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Iqbal Ahmad, J.

This is an appeal by Chunni Lal, an unsuccessful plaintiff in a pre-emption suit. The property in dispute was originally situated in khewat No. 1 of mahal Kewal Ram and belonged to one Babu Ram who sold the same to Misri Lal, brother of Chunni Lal, on 27th April for a sum of Rs. 600. On the same date, viz. on 27th April, Misri Lal executed a deed of agreement in favour of Babu Ram agreeing to resell the property to Babu Ram on payment of Rs. 600 within five years, On 23rd April 1935, Misri Lal sold the property in dispute to Ram Prasad, the own brother of Baburam, for an ostensible consideration of Rs. 672. Chunni Lal then filed the suit giving rise to the present appeal to pre-empt the sale in favour of Ram Prasad. It appears that both Chunni Lal and Ram Prasad were cosharers in khewat No. 1 in which the property in dispute was situated, but Chunni Lal maintained that as he was a brother of Misri Lal vendor he had a preferential right of purchase as against Ram Prasad in view of the provisions of Section 12(3), Agra Pre-emption Act. During the pendency of the suit in the trial Court, Babu Ram exercised the option of repurchase given to him by the agreement of 27th April 1934, and it is a matter of admission that he repurchased the property from Ram Prasad before the suit was decided by the trial Court. It is also common ground that before the institution of the suit

proceedings for partition of mahal Kewal Ram were initiated in the Revenue Court and during the pendency of the suit in the trial Court, the partition was concluded and as a result of that partition khewat No. 1 was split up into four khewats and the share originally owned by Ram Prasad in khewat No. 1 and the share purchased by Ram Prasad from Misri Lal fell in khewat No. 1/2, whereas the share of Chuni Lal, plaintiff-appellant, fell in khewat No. 1/1. Ram Prasad contested the suit on the allegation that as in consequence of the partition the share originally owned by him in khewat No. 1 and the share in dispute appertained to one and the same khewat, viz. khewat No. 1/2, and the plaintiff was not a cosharer in that khewat the plaintiff's suit was not maintainable. In other words, Ram Prasad maintained that he being a cosharer in the same sub-division of the mahal in which the pre-empted property was situated came within class 2 of the pre-emptors laid down by Section 12(1), Agra Pre-emption Act, and the plaintiff came within class 3 of pre-emptors, and as such the plaintiff had not a preferential right of purchase as against him. This contention of Ram Prasad was given effect to by both the Courts below and the plaintiff's suit was dismissed by those Courts. The Courts below based their decision on the provisions of Section 19 of the Act which inter alia provides that no decree shall be passed in favour of any person unless he has subsisting right of pre-emption at the time of the decree....

2. In appeal before me the decrees of the Courts below are assailed on the ground that as during the pendency of the suit the property in dispute was repurchased by Babu Ram the plaintiff's claim for pre-emption ought to have been decreed inasmuch as on the date of the repurchase Babu Ram was a total stranger to the mahal. In my judgment there is no force in this contention. In the first place the plaintiff's claim was to pre-empt the sale in favour of Ram Prasad and not to pre-empt the repurchase made by Babu Ram. Further the right of pre-emption recognized by the Agra Pre-emption Act does not, in my judgment, accrue on the exercise of the right of re-purchase exercised by the original owner. Section 11 of the Act is exhaustive of the cases in which the right of pre-emption accrues and that Section is confined in its operation to cases where "a cosharer or petty proprietor sells any proprietary interest in land...." The right of repurchase exercised by Babu Ram was not tantamount to the sale of the property within the meaning of Section 11. The essence of the transactions entered into by Babu Ram and Misri Lal on 27th April 1934 was that the property in dispute was transferred to Misri Lal subject to the condition that Misri Lal will be under a contractual obligation to retransfer the property to Babu Ram, the original owner, provided Babu Ram paid the agreed amount within the stipulated period. Section 11 is in my judgment applicable only to cases of voluntary sales and not to transfers effected in pursuance of an agreement entered into by a vendee to retransfer the property to the original owner within a certain time. In other words a right of pre-emption does not accrue on the original owner regaining his property by exercising the right of repurchase as was done by Babu Ram in the present case.

3. The matter can be looked at in another way. Misri Lal was under a contractual obligation to reconvey the property to Babu Ram provided the latter exercised the right of repurchase given to him by the agreement of 27th April 1934. The purchase made by Ram Prasad from Misri Lal was therefore subject to the right of repurchase vested in Babu Ram. The right of pre-emption is a right of substitution for the buyer and even if Chunni Lal had obtained a decree for pre-emption as against Ram Prasad the decree obtained by him could not adversely affect the right of Babu Ram to repurchase the property. In other words, the right of pre-emption exercised by Chunni Lal would have been subject to the right of Babu Ram to repurchase the property within five years. Babu Ram's right of repurchase was therefore a paramount right and superior to the right of pre-emption exercised by Chunni Lal. It would therefore have been open to Babu Ram to exercise the right of repurchase even though Chunni Lal had got possession of the property by exercising the right of pre-emption. That being so, Chunni Lal's right of pre-emption was subordinate to the right of Babu Ram to repurchase the property and as such Chunni Lal could not exercise the right of pre-emption on the repurchase made by Babu Ram. Chunni Lal's suit was therefore rightly dismissed by the Courts below and I dismiss this appeal with costs.