

## Seth Chunni Lal Vs Ram Prasad and Others

**Court:** Allahabad High Court

**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.