

(1932) 06 AHC CK 0016

Allahabad High Court

Case No: None

Mt. Saghir Fatma Bibi and
Another

APPELLANT

Vs

Brij Rai Singh and Another

RESPONDENT

Date of Decision: June 1, 1932**Hon'ble Judges:** Sulaiman, C.J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Sulaiman, C.J.

This is a defendants' appeal arising out of a suit for preemption. The sale deed was taken by the two defendants jointly and there was no specification of any share in the document itself. One of them is supposed by the lower appellate Court to be a cosharer and the other is a stranger. In fact the former is an exproprietary tenant. They led oral evidence to show that under a secret arrangement between themselves they had taken the property in equal shares and accordingly pleaded that the suit should not be decreed against both the purchasers. A second appeal has been preferred not by the tenant purchaser but by them jointly. He has again associated with him a stranger to the mahal and has made common cause with her. Strong reliance is based on behalf of the appellants on the case of [Sheopujan Rai Vs. Bishnath Rai and Others](#) That was quite a different case. There an ostensible vendee after taking the sale deed disclosed in the Revenue Court that he had associated with him three other persons who had paid the consideration and who had purchased the property to the extent of one-fourth share each. When the suit was brought by the plaintiff against all the four persons Sheopujan acquired a small share by way of gift and claimed that the whole suit should fail. The plaintiff was allowed by the Court to set up the admission of the defendant himself that he had joined with him other strangers to the mahal and that accordingly the whole claim could not be dismissed on account of the gift but that the plaintiff could only be compelled to give up his one-fourth share only.

2. It was pointed out by the Bench that the plaintiff not being a party to the sale deed there was nothing to prevent him establishing a fraud committed by Sheopujan who took the sale deed in his own name, although there had been a secret arrangement between him and the other associates to purchase the property together and to pay the price thereof in proportion of their respective shares. That principle would not apply to the converse case where, although the plaintiff is suing to pre-empt the entire property, the defendants set up a secret arrangement by which they allege that there was an understanding that their shares would be specified. We think that they cannot be allowed to go behind the sale deed which shows that the property was jointly acquired. u/s 22, Agra Pre-emption Act, where property is jointly purchased or foreclosed by two persons against one of whom only there is a right of preemption, such right may be claimed as against both. The explanation added to that section says that this section does not apply where such purchaser acquires a defined interest. The defendants cannot be allowed to set up a specific share when it does not find a place in the sale deed. The appeal is accordingly dismissed with costs.