

## **Malkhan Singh vs Sadhu And Ors. on 17 November, 1950**

**Equivalent citations: AIR1952ALL284, AIR 1952 ALLAHABAD 284**

### **JUDGMENT**

Sankar Saran, J.

1. This is a plaintiffs appeal in a suit for pre-emption.

2. On 22-7-1945, a sale deed was executed by one Mahabir Prasad in favour of Sadhu Ram and Sita Ram. Next day a suit for pre-emption (Suit No. 345 of 1915 was filed by the present appellant and subsequently on 5-9-1945, another Suit No. 393 of 1945 was filed by Bharat Singh and others for pre-empting the same property. During the pendency of the suit, on 18-10-1945, the plaintiffs in Suit No. 393 of 1945, Bharat Singh and others, became co-sharers by a deed of exchange in the same Khewat. It may be mentioned that the plaintiff Malkhan Singh was a co-sharer in the mahal.

3. This case was heard by a learned single Judge of this Court who considered it necessary to refer it to a Bench with the following observations :

"Learned counsel for the plaintiff-appellant argues, on the analogy of the proviso to Section 19, that just as a vendee could not defeat a suit merely acquiring a share after the institution of the same, so could a rival pre-emptor also not defeat a pre-emption claim by a co-sharer merely by virtue of acquiring a share after the institution of the suit. To my mind, there seems to be no reason why a different rule should be followed in the case of a rival pre-emptor relying on an acquisition of interest after the institution of the suit than the rule to be enforced where it is the stranger vendee who acquires such an interest after the suit."

The learned Judge referred this case to a Bench because of the absence of any ruling and also because of the fact that he was taking a view different from both the Courts below in this particular case.

4. The lower appellate Court, in this case held:

"There is no doubt that Malkhan Singh" had a preferential right of purchase as against Bharat Singh and others prior to the execution of the exchange deed referred to above and it has been contended on behalf of Malkhan Singh that Bharat Singh and others cannot improve their position by obtaining the exchange deed in question in view of the proviso which has been added to Section 19, Agra Pre-emption Act,"

The lower appellate Court has placed reliance upon two cases of this Court, Jagrup Singh v. Indrasan, 24 ALL. L. J. 325 and Lachhman v. Faizul Hasan, 25 ALL. L. J. 134. There are actually two or three sections of the Agra Preemption Act which are of any importance for the purposes of deciding this case: Sections 10, 12, 19 and 20.

5. Section 19, Pre-emption Act, runs as follows:

"No decree for pre-emption shall be passed in favour of any person unless he has a subsisting right of pre-emption at the time of a decree, but where a decree for pre-emption has been passed in favour of a plaintiff, whether by a Court of first instance or of appeal, the right of such plaintiff, shall not be affected by any transfer or loss of his interest occurring after the date of such decree."

In 1929 a proviso was added by an amending Act (Act IX [9] of 1929), which is in the following terms:

"Provided that no voluntary transfer in favour of the vendee after the institution of a suit for pre-emption shall defeat any right which the plaintiff had at the date of such institution."

The amendment to Section 19 arose from the view that the plaintiff must have a subsisting right, of pre-emption not only at the time of the sale and of the institution of the suit, but also at the time of the decree. The result was that in cases where a defendant vendee acquired an interest in a mahal which would bring him on the same footing with the pre-emptor before the passing of the decree in the pre-emptors' favour, the defendant was able to defeat the pre-emptor's claim, because the pre-emptor then no longer had a subsisting or a superior right to that of the defendant vendee. The consequence of this state of affairs was that the vendees tried in dubious manner to come up to the same footing as the pre-emptor by obtaining subsequent transfers in their favour. To obviate the difficulties consequent upon the adoption of such procedure by the vendees, the enactment was made.

6. I would have accepted the arguments of the learned counsel for the appellant that a pre-emptor is more or less in the position of the vendee, because the vendee and the pre-emptor are both desirous of purchasing the property, but the cases referred to by the learned counsel for the appellant, however, are not with regard to Section 19. They relate to Section 12. After the decision of these cases, however, the principles laid down in them were incorporated in the Amending Act (IX [9] of 195.9) by the addition of an explanation to Section 12 which runs as follows:

"For the purposes of this section a vendee shall be deemed to be a person claiming pre-emption."

It means that the scope of the amendment has been confined only to this section. If it were the purpose of the Legislature to give the benefit of the proviso to Section 19 to the pre-emptor also then there is no reason why the language of the Amending Act specifically confined itself to the word

"vendte."

7. In the view that I take I am unable to accept the contention of the counsel for the appellant that the principles governing the proviso to Section 19 can be extended so as to give the same protection to the pre-emptor as is given to the vendee.

8. The result is that I would dismiss this appeal with costs.

Bind Basni Prasad, J.

9. Having regard to the fact that there is no authority on the point which arises for determination in this appeal, a learned single Judge has referred it to a Bench.

10. This is a plaintiff's appeal arising out of a suit for pre-emption. The relevant facts are these:

11. On 22-7-1945 Mahabir Prasad sold certain zamindari property situated in Khata Khewat No. 2, Mahal Sujan Ram, village Maura, Tahsil Deoband in the District of Saharanpur. On the day following viz. 23-7-1945, the appellant instituted suit No. 346 of 1945 for the pre-emption of the property. It is from this suit that the present appeal arises. About six weeks later, viz., on 5 9 1945, Bhurat Singh and others brought another suit for the pre-emption of this very property (Suit No. 393 of 1945). The two suits were consolidated by the learned Munsif under Section 18, Agra Pre-emption Act, 1912, and the plaintiff in the one was made a defendant in the other. On 18-10-1945, Bharat Singh and others obtained a share in this Khewat by means of a deed of exchange. Relying upon the provisions of Section 19, Agra Pre-emption Act, 1922, the trial Court held that the present appellant had no Subsisting right of pre-emption as against Bharat Singh and others. So it decided the two suits with the following orders :

"The Suit No. 393 of 1945, is decreed in terms that the plaintiffs shall pre-empt and get possession of the property, both proprietary and actual, over the property in suit on payment of Rs. 1,000 only (Rupees one thousand only) to defendants 1 and 2 and thereupon the Sait No. 346 of 1945, shall stand dismissed, provided that the payment shall be made within one month, and in case of default the suit shall stand dismissed with costs.

And the Suit No. 346 of 1945 is decreed only in the case of such default in terms above described mutatis mutandis ...,"

12. Mulkhan Singh, the plaintiff appellant, went up in appeal and the learned Civil Judge observed:

"There is no doubt that Mulkhan Singh had a preferential right of purchase as against Bharat Singh and others prior to the execution of the exchange deed referred to above and it has been contended on behalf of Malkhan Singh that Bharat Singh and others cannot improve their position by obtaining the exchange deed in question in view of the proviso which has been added to Section 19, Agra Pre-emption Act. Reliance has

been placed on Section 12 (3) Agra Pre-emption Act. Section 20 of the same Act and on the rulings reported in Jagrup Singh v. Indrasan, 24 All L. J. 325 and Lachaman v. Faizul Hasan, 25 All L. J 134. In my opinion, these rulings do not help the appellant in any way and on reading the plain language of Section 19, it becomes clear that a vendee cannot take advantage of any deed which he might obtain in his favour during the pendency of a pre-emption suit, but a rival pre-emptor is certainly entitled to acquire a preferential right during the pendency of a pre-emption suit and so Bharat Singh and others can certainly take advantage of the exchange deed dated 18/19-10-1945, by which they have become co-sharers in the same khewat. Malkhan Singh is a co sharer in the same mahal and so the learned Munsif was right . . "

13. Learned counsel for the appellant contends that according to the proviso to Section 19 of the Act a vendee cannot defeat a right of pre-emption by obtaining a transfer in his favour after the institution of a suit for pre-emption; and if a vendee has been so precluded from defeating the right of pre-emption then on the same principle a rival pre-emptor also should not be allowed to defeat the rights of pre-emption of another pre-emptor by virtue of an exchange obtained during the pendency of the suit. In this connection reliance is placed upon Jayrup Singh, Indrasan, 24 ALL. L. J. 325 in which it was held that in a case where there are more persons than one of the same class claiming pre-emption, the vendee is a person claiming pre-emption within the meaning of Section 12 Sub-section (3), new Pre-emption Act. The same view was expressed also in Lachhman Prasad v. Faizul Hasan, 25 ALL. L. J. 134. The right of pre-emption is defined as follows in Sub-section (9) of section 4 :

"'Right of pre-emption' means the right of person a on a transfer of immovable property to be substituted in place of the transferee by reason of such right" It is evident from this that a right of pre-emption accrues only if such a right exists on the date of the transfer. No person can claim pre-emption if he did not possess the right of pre-emption on the day of the sale. The next date is the date of the suit and a pre-emptor must have the right of pre-emption on that date also. The last date is the date of the decree and in regard to it Section 19 provides as follows:

"No decree for pre-emption shall be passed in favour of any person unless he has a subsisting right of preemption at the time of the decree, but where a decree for pre-emption has been passed in favour of a plaintiff, whether by a Court of first instance or of appeal, the right of such plaintiff shall not be affected by any transfer or loss of his interest occurring after the date of such decree."

14. In 1929 the following proviso was added to Section 19:

"Provided that no voluntary transfer in favour of the vendee after the institution of a suit for pre-emption shall defeat any right which the plaintiff had at the date of such institution."

The effect of Section 19 is that a pre-emptor must have a subsisting right of pre-emption on the date of the decree also. Prior to the amending Act of 1929 vendees used to defeat the pre-emptors' rights by obtaining transfers by means of ex-change after the institution of the suit. The proviso was added to Section 19 to meet that situation and the vendees were then precluded from defeating pre-emptors' claims by obtaining such transfers after the institution of the suit. It is not possible to extend this proviso to the pre emptors also. By doing so, the substantive part of Section 19 will be rendered nugatory. The statute should be so interpreted as to give effect to every part of it and not to render any portion of it nugatory. The two cases (sic)agrup Singh v. Indrasan, (24 ALL. L. J 325) and Lachhman Prasad v. Faizul Hasan, (25 ALL. L. J. 134) relied upon on behalf of the appellant do not help him. in these cases it was Section 12 of the Act which was under consideration and not Section 19 and it was with reference to Section 12 (3) that their Lordships held that the vendee is also a person claiming pre-emption. The principle laid down in these two cases was subsequently given statutory effect by the Amending Act of 1929 by the addition of an explanat on to Section 12 which provides that for the purposes of that section a vendee shall be deemed to be a person claiming pre-emption. The effect of these two cases is confined to Section 12 and there is no justification to extend their application to Section 19. I am of opinion that the proviso applies only to transfers obtained by vendees after the institution of a suit for pre-emption. This is the plain meaning of the proviso. It does not apply to transfers obtained by rival pre-emptor. According to the law as it stands, a pre-emptor can defeat the claim of his rival by securing a preferential right by means of a transfer obtained after the institution of the suit.

15. In view of the above findings, I would dismiss the appeal with costs.