

the principle laid down by the Full Bench we find that Kamta Prasad had no right to maintain a suit for pre-emption on the date upon which the sale was made to him or on the date upon which he was added as a defendant to the proceedings.

We have been referred to the case of *Janki Prasad v. Ishar Das* (1). This case does not assist the appellant. It only decided that it was necessary that a plaintiff in a pre-emption case should have a right to maintain his suit not only on the date of the sale but on the date on which the suit was instituted.

We were also referred to the case of *Ram Gopal v. Piari Lal* (2). This case was decided on its own facts and circumstances. There the plaintiff had ceased to be a co-sharer by partition at the time the court was called upon to make a decree in his favour. In the present case the plaintiff was a co-sharer at the date of the sale to the original vendee. He continued to be a co-sharer right up to the time that the decree was made in his favour. Under these circumstances we consider that the decree of the court below was correct and ought to be confirmed. We accordingly dismiss the appeal with costs.

*Appeal dismissed.*

*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.*

PARTAB SINGH AND OTHERS (PLAINTIFFS) v. DAULAT AND OTHERS  
(DEFENDANTS).\*

1913  
December, 3.

*Pre-emption—Claim based on relationship to vendor—Death of plaintiff pending suit—Sons of plaintiff not entitled to take advantage of the relationship of their father.*

The plaintiff in a suit for pre-emption had a preferential right over the vendee on the ground of his nearer relationship to the vendor, but the plaintiff's sons had not. *Held* that the plaintiff's sons could not, on the death of their father pending the suit, claim to take advantage of the relationship in which their father had stood to the vendor.

THIS was a suit for possession by right of pre-emption. The suit was instituted by a person who, by reason of his nearness of relationship to the vendor, possessed a superior pre-emptive right to that of the vendee; but during the pendency of the

\* Second Appeal No. 272 of 1913, from a decree of Ganga Sahai, Second additional Subordinate Judge of Moradabad, dated the 7th of December, 1912, confirming a decree of Harihar Prasad, Munsif of Hayoli, dated the 23rd of April, 1912.

(1) (1899) I.L.R., 21 All., 374.

(2) (1899) I.L.R., 21 All., 441.

1913

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suit he died. His sons were brought upon the record as plaintiffs. They themselves were not nearer relations to the vendor than was the vendee; but they claimed the advantage of the relationship possessed by their father. The defendants pleaded that the substituted plaintiffs had no preferential right as against them. The courts below dismissed the claim. The plaintiffs appealed to the High Court.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the appellants, submitted that Dal Chand pre-emptor died during the pendency of the suit and his heirs were brought on the record. Dal Chand claimed a priority over the defendant vendee as he was a nearer relative of the vendor, and his sons stood in his shoes and could also claim priority. A son was entitled to succeed to all the property of his father and the right to pre-empt was also a species of property. The fact that the sons stood on exactly the same footing as the vendee would not deprive them of the right which devolved upon them through the father. The following cases were referred to during the argument—*Wajid Ali Khan v. Shaban* (1), *Muhammad Yusuf Ali Khan v. Dal Kuar* (2) and *Kaunsilla Kunwar v. Gopal Prasad* (3).

Mr. *D. R. Sawhny*, for the respondent, submitted that the matter was concluded by *Ram Gopal v. Peari Lal* (4). The right of pre-emption was a purely personal right, and the son not being a nearer blood relation himself could not succeed as against the vendee. He might only inherit the right to maintain the suit but not to any thing else. The right of the plaintiff must subsist at the date of the decree; *Tafazzul Husain v. Than Singh* (5).

The Hon'ble Dr. *Tej Bahadur Sapru* was heard in reply.

RICHARDS, C. J. and TUDBALL J.—We think, having regard to the fact that the appellants could not have maintained the suit as against the vendees had they instituted the suit themselves, they cannot take advantage of the fact that their father at the time of the suit had a preferential right as against the vendees on the ground that he was a nearer relation. We accordingly dismiss the appeal with costs.

*Appeal dismissed.*

- (1) (1909) I. L. R., 31 All., 623.      (3) (1906) I. L. R., 28 All., 424.  
 (2) (1897) I. L. R., 20 All., 148.      (4) (1899) I. L. R., 21 All., 441.  
 (5) (1910) I. L. R., 32 All., 567.