

Before Mr. Justice Sulaiman and Mr. Justice Banerji.

KUNDAN LAL (DEFENDANT) *v.* AMAR SINGH AND OTHERS
(PLAINTIFFS).*

1927
April, 29.

Act (Local) No. XI of 1922 (Agra Pre-emption Act), sections 13 and 20—Pre-emption—Successful suit by one of several rival pre-emptors no bar to suit by others for a share of the property pre-empted.

Where there are several possible pre-emptors of equal degree, the fact that one has instituted a successful suit for pre-emption is no bar to the others—if they are within limitation—suing for a proportionate share in the property pre-empted. *Raj Narain Rai v. Dunia Pande* (1), followed.

THE facts of this case sufficiently appear from the judgement of the Court.

Dr. N. C. Vaish, for the appellant.

Munshi Durga Prasad, for the respondents.

SULAIMAN and BANERJI, JJ.—This is a defendant's appeal arising out of a suit brought by rival pre-emptors for a division of property with the contesting defendant. On the 9th of August, 1923, certain vendors sold the property to certain vendees. Kundan Lal the contesting defendant brought a suit for pre-emption against the vendees and obtained a decree on the 14th of March, 1924. He obtained possession under the said decree. The present plaintiffs, who are eight in number, brought the present suit on the 19th of July, 1924, for a share in the property so pre-empted. The defendant contested that inasmuch as he was a co-sharer and had acquired the property prior to the present suit, section 20 was a bar to the plaintiffs' claim. The court of first instance acceded to this contention and dismissed the suit, but the lower appellate court has come to a contrary conclusion.

*Second Appeal No. 2068 of 1925, from a decree of G. O. Allen, District Judge of Saharanpur, dated the 2nd of June, 1925, modifying a decree of Joti Sarup, Second Subordinate Judge of Saharanpur, dated the 9th of December, 1924.

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It cannot be doubted that before the passing of the Agra Pre-emption Act the mere fact that a rival pre-emptor had obtained a decree for pre-emption did not prevent other rival pre-emptors from claiming a share in the property as against him, provided their suit was instituted within one year from the sale. In the case of *Raj Narain Rai v. Dunia Pande* (1) it was pointed out that a right of pre-emption was not a right of re-purchase but a right of substitution for the original vendee, and that under the decrees in favour of the rival pre-emptors there has not been any fresh transfer in their favour but they have been put in the places of the original vendees.

In our opinion that law has in no way been altered by the new Act. Section 4, clause (9), embodies the principle that the right of pre-emption is not a right of transfer but a right of substitution. Under section 13, when two or more persons claiming pre-emption are equally entitled, the property shall be equally divided between them, each paying an equal share of the consideration for the transfer. It matters little who comes to court first, provided that they all come within the period of limitation. Section 20 of the Act cannot apply to the case where one rival pre-emptor has obtained a decree for pre-emption first. The expression "where the purchaser has *transferred* the property in dispute to a person having a right of pre-emption etc.," cannot cover the case of a pre-emptor obtaining a decree for pre-emption, for, as pointed out by us, that is not a case of a transfer by the vendee to the pre-emptor. In our opinion, therefore, the view taken by the learned District Judge was correct, and the present plaintiffs are entitled to their proportionate share in the pre-empted property.

Kundan was one of the claimants. The present plaintiffs, who are eight in number, are also claimants.

(1) (1910) I.L.R. 32 All., 340.

These latter are, therefore, entitled to 8/9ths of the property sold under the deed of the 9th of August, 1923, on payment of 8/9ths of the sale consideration. The appeal is accordingly dismissed with costs.

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Appeal dismissed.

Before Mr. Justice Iqbal Ahmad and Mr. Justice Kendal

SUBHAN ALI (DEFENDANT) v. CHITTU AND ANOTHER
(PLAINTIFFS).*

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May, 2.

Act No. VIII of 1890 (*Guardians and Wards Act*), section 29—
*Guardian and minor—Sanction of court to sale of
minor's property—Condition subsequent imposed on guar-
dian—Effect of guardian's failure to comply.*

A District Judge, while granting permission to a certified guardian of a minor to transfer the minor's property, can impose conditions on the guardian; but a distinction must be drawn between a condition precedent and a condition subsequent imposed on the guardian. The only duty cast upon the transferee by law is that he must satisfy himself that the order sanctioning the transfer has been strictly complied with by the guardian up to the time of the execution of the deed of transfer and that no conditions precedent imposed by the order have been violated. If by the order sanctioning the transfer, the guardian and not the transferee is directed to do certain acts after the execution of the deed of transfer, the failure of the guardian to comply with that direction cannot affect the validity of the transfer. *Dyam Khan v. Sarat Chandra De* (1) and *Kunja Mal v. Gauri Shanker* (2), referred to. *Sri Thakur Kishori Ramanji Maharaj v. Duley Ram* (3), distinguished.

THE facts of this case are fully stated in the judgment of the Court.

Munshi Narain Prasad Ashthana, for the appellant.
Babu Piari Lal Banerji, for the respondents.

*Second Appeal No. 533 of 1925, from a decree of A. G. P. Pullan, District Judge of Agra, dated the 16th of December, 1924, confirming a decree of Alakh Murari, Subordinate Judge of Agra, dated the 23rd of January, 1924.

(1) (1916) 26 C.W.N., 218.

(2) (1905) 3 A.L.J., 30.

(3) (1924) 22 A.L.J., 155.