

rule 98 and the learned Munsif was bound to dismiss her application for being put into possession of the property in dispute under order XXI, rule 99 of the Civil Procedure Code. I do not see any reason for interference with the order of the learned Munsif and dismiss this application with costs.

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KULSUM-UN-  
NISSA  
v.  
RAGHUBAR  
DAYAL

## APPELLATE CIVIL.

*Before Sir John Thom, Chief Justice, and Mr. Justice  
Ganga Nath*

SANKATHA PRASAD (PLAINTIFF) v. RUKMANI AND OTHERS  
(DEFENDANTS)\*

1939  
October, 6

*Pre-emption—Benami purchase—Real purchaser to be ascertained—No pre-emption if no preferential right as against real purchaser.*

A suit for pre-emption does not lie in the case of a sale in which the ostensible vendee is a benamidar for a person against whom the plaintiff has no preferential right of pre-emption. It is the duty of the court in such a suit to discover who is the real purchaser and to consider whether the plaintiff has any preferential right as against him.

Mr. *Ram Nama Prasad*, for the appellant.

Mr. *G. S. Pathak*, for the respondents.

THOM, C.J., and GANGA NATH, J.:—This is a plaintiff's appeal and arises out of a pre-emption suit.

The suit was dismissed by the learned Munsif whose decision was confirmed by the lower appellate court. The second appeal in this Court was dismissed and it is against that order of dismissal that the present appeal has been filed.

The main question in issue between the parties is as to whether a suit for pre-emption will lie in the case of a sale in which the ostensible vendee is a benamidar for a co-sharer.

The learned single Judge has held that the question for decision in such a case is, who is the real purchaser

\*Appeal No. 8 of 1939, under section 10 of the Letters Patent.

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of the property which the plaintiff desires to pre-empt? If the real purchaser is a co-sharer who has a prior right of pre-emption the plaintiff's claim must fail. Benami transactions, as the learned single Judge has pointed out, are recognized by the law of this country and there is no authority beyond the decision in the case of *Mansur Ali v. Sultan* (1) for the proposition that the court is not entitled to look behind the sale deed but must assume that the vendee is the person mentioned in the deed. In an unreported case, S. A. No. 1173 of 1908, a Bench of this Court held that a suit for pre-emption did not lie against a vendee who was a mere benamidar for a purchaser who had a prior right of pre-emption to the plaintiff. This decision was followed by *Harsaran v. Dilraji* (2).

Upon a consideration of these authorities and on general principles we are of the opinion that a suit for pre-emption against a vendee who is a benamidar for a person who has a prior right of pre-emption to the plaintiff does not lie. It is the duty of the court in such a suit to discover who is the real purchaser, i.e. who takes the proprietary and beneficial interest under the sale. As pointed out in the decision of the Privy Council in *Gur Narayan v. Sheolal Singh* (3) the benamidar may have no beneficial interest in the property or business standing in his name but he represents in fact the real owner and is in the legal position of such representative. In the present suit the vendees under the sale deed represent the real owner; the real owner is a co-sharer against whom the plaintiff has no right of pre-emption. The plaintiff's suit therefore must fail.

There is no force in this appeal, the appeal is accordingly dismissed with costs.

(1) A.I.R. 27 Oudh, 509.

(2) (1910) 8 Indian Cases, 527.

(3) (1918) I.L.R. 46 Cal. 566.