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residential building in addition to residence, some business is also done may not, for that reason alone, convert it either into a "non-residential building" or a "scheduled building," unless the other requisites of "scheduled building" are also satisfied. Before me, no attempt has been made to bring the premises in dispute within the category of "scheduled building". Indeed, if the tenant also resides in the building, it would necessarily exclude it from the purview of "non-residential building". From this point of view, it is obvious that unless the tenant is proved to have stopped using the house as a residential building, it cannot be deemed to be converted into a non-residential building. The decision of the learned District Judge, therefore, seems to be not liable to challenge on this ground. It has been complained that the learned District Judge has not given any positive finding that the tenant is still residing there. It appears to me that this was not disputed and has perhaps been the case of the parties throughout. In any event, I have not been shown any convincing evidence for the purpose of coming to a conclusion that the tenant has stopped living in the house in question, and the onus being on the landlord to prove these ingredients, I have no option but to uphold the conclusion of the learned District Judge on this point.

Nothing has been said in regard to the personal requirement. The result, therefore, is that this revision fails and is hereby dismissed but without costs.

R.S.

FULL BENCH

Before D. Falshaw, C.J., Inder Dev Dua and Harbans Singh, JJ.

BACHAN SINGH AND OTHERS,—*Appellants*

versus

BHOPAL SINGH AND OTHERS,—*Respondents*

1965

May, 4th.

Regular Second Appeal No. 1726 of 1961.

Punjab Pre-emption Act (I *of* 1913)—*Pre-emptor joining with him a stranger having no right of pre-emption as co-plaintiff in the suit—Whether forfeits his right to decree—Pre-emptor executing an*

agreement with another in respect of the land sought to be pre-empted for raising funds for litigation—Whether loses his right to decree—Right of pre-emption—Nature of—Doctrine of stare decisis—*Meaning and scope of.*

Held, that a pre-emptor as plaintiff joining with him a stranger as co-plaintiff does not forfeit his right to pre-empt. The error in such a case is in the form of the claim made in Court and can be remedied without infringing the right of any person. It is only a question of the law of procedure in enforcing by suit a right of pre-emption.

Held, that a *benami* pre-emptor is an inadmissible notion and a pre-emptor cannot acquire property by pre-emption for another; the right being a personal one exercisable only for the pre-emptor's own benefit; but this plea must be established by the strictest evidence. And a plaintiff in a pre-emption suit cannot be held disentitled to a decree merely because in order to raise funds for the litigation, he has entered into an agreement with another person as to what he would do with the property when he gets it. Any subsequent transfer by the successful plaintiff pre-emptor after he has obtained the decree may give rise to a fresh cause of action to other pre-emptors and the Court is scarcely concerned with the question as to how the plaintiff has raised funds for prosecuting the suit.

Held, that the right of pre-emption from the point of the vendee is a restriction on his right to hold the property and from the point of view of the vendor it is restriction on his right to dispose of the property to whomsoever he likes, and because of these two restrictions the Courts do not generally look at this right with favour. The right of pre-emption lawfully created has to be respected and enforced by the Courts in accordance with the legislative intent and it is not permissible for them to decline to do so on account of any pre-disposed dislike for or prejudice against the pre-emptive right, except to the extent that the law so enjoins. Courts are under a solemn obligation to administer justice according to law.

Held, that a decided case is worth as much as it weighs in reason and righteousness and no more and it would not be enough to say "Thus said the Court". A decided case has to prove its right to wield authority and to control a given situation by the degree in which it appeals to logic and serves the cause of justice as to all parties concerned. A precedent must not be allowed to control if its strength depends only on its age, but may crumble at the slightest probing touch of reasoned scrutiny. To have binding value, therefore, a decision must command the support of reason, research, experience and intrinsic judicial consistency, for, adherence

to precedent is designed to assure that justice flows from certainty and stability. If such adherence leads to injustice or uncertainty, then the precedent loses its guiding value. *Stare decisis* has at times been described metaphorically to be a sort of a viaduct meant for transporting the precious cargo of justice requiring its piers to be tested from time to time to make certain that they are sound and strong enough to support the weight. The discovery of a weak spot therein would render it unfit for the job.

Case referred by the Hon'ble Mr. Justice Shamsher Bahadur, on 29th January, 1963, for the decision of a question of law arising in the case to the Division Bench. The Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice H. R. Khanna, on 25th March, 1964, referred the case to a Full Bench and the case was finally decided by the Full Bench consisting of the Hon'ble Chief Justice, Mr. D. Falshaw, the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice Harbans Singh on 4th May, 1965.

Second Appeal from the decree of the Court of Shri Diali Ram Puri, Additional District Judge, Amritsar, dated the 16th day of October, 1961, modifying that of Shri D. C. Aggarwal, Sub-Judge, 1st Class, Tarn Taran, dated the 26th December, 1960.

H. S. Doaba with K. L. Sachdeva and T. S. Doabia, Advocates, for the Appellants.

H. L. Sarin, A. L. Bahri, Miss Asha Kohli and M. S. Jain, Advocates, for the Respondents.

ORDER OF THE FULL BENCH

Dua, J.

DUA, J.—This regular second appeal has been placed before us in pursuance of the order, dated 25th March, 1964, of a Bench consisting of Khanna, J. and myself. Originally this appeal and R.S.A. No. 190 of 1962 arising out of the same controversy and preferred against the same judgment and decree of the Additional District Judge, Amritsar, were heard by Shamsher Bahadur, J. who, on 29th January, 1963, in view of the conflicting decisions of the Allahabad High Court and the Punjab Chief Court on the point in controversy, suggested both the appeals to be disposed of by a Full Bench. The appeals were, however, as observed by my Lord the Chief Justice, placed before the Division Bench. Regular Second Appeal No. 190 of 1962 was on 19th March, 1964 withdrawn and, therefore, dismissed as

such by the Bench, whereas full arguments were addressed by the parties in the present appeal, and since the correctness of some of the Bench decisions of the Punjab Chief Court was questioned, it was considered desirable to suggest disposal of this appeal by a Full Bench. As only one question of law was canvassed before the Bench, which is clear from the referring order, on which the fate of the whole appeal rested; it was not considered necessary to formulate the said question and the appeal itself was directed to be disposed of finally by the Full Bench.

In order to understand the significance of the point raised, the facts may briefly be recapitulated. Sewa Singh and his brothers Mewa Singh, Balwant Singh, Pritam Singh and Bikram Singh sold one-third share of 206 *kanals* and 5 *marlas* of agricultural land in favour of Bachan Singh, Hazara Singh, Kapoor Singh and Sampuran Singh, sons of Jind Singh and Avtar Singh, son of Wasakha Singh. Bhopal Singh, son of one of the vendors and Sarmukh Singh, son of Harnam Singh, instituted the suit for pre-emption, out of which the present appeal arises, the first plaintiff claiming pre-emptive right as son of one of the vendors and nephew of the other vendors and the second plaintiff claiming pre-emptive right as a co-sharer in the land in dispute. Defendants 7 to 10, the co-vendors, admitted the allegations of the plaintiffs and supported their claim. The vendees-defendants denied that Sarmukh Singh, plainitff No. 2, was a co-sharer; they also denied that Bhopal Singh, was the son of Sewa Singh. In addition it was pleaded that an agreement had been written between the plaintiffs which precluded Bhopal Singh, from claiming any interest in the land sought to be pre-empted and that the suit was *benami* and collusive. These are the only pleas which concern us at this stage.

On the pleadings the trial Court settled seven issues, out of which only three may be reproduced at this stage—

(1) Whether the plaintiffs have a superior right of pre-emption ?

* * * * * * * *

(5) Whether the suit is for partial pre-emption; if so, with what effect ?

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(6) Whether the suit is collusive and *benami* ?

* * * * * * * *

The trial Court dismissed the plaintiffs' suit finding under issue No. 6, that it was Bikram Singh vendor and not Bhopal Singh, who wanted to undo the sale for his own and Sarmukh Singh's benefit. The suit was accordingly held to be *benami*, in which Bhopal Singh, was only a figurehead for getting the sale undone with a view to confer benefit on the vendors and through them on Sarmukh Singh. Bhopal Singh, was, however, also found to be suing not for himself but for another person as well and on that account also he was held disentitled to the decree sought.

On appeal having been preferred by the plaintiffs Bhopal Singh and Sarmukh Singh, the learned Additional District Judge, reversing the judgment and decree of the Court of first instance granted a decree for pre-emption in favour of Bhopal Singh, plaintiff. The lower appellate Court disagreed with the conclusion of the trial Court that the pre-emptive suit had been brought by Bhopal Singh on behalf of Bikram Singh or for his benefit. The claim of Sarmukh Singh was disallowed and the suit on his behalf was held to have been rightly dismissed.

Against this judgment and decree, as already observed, the vendees preferred the present appeal, and Sarmukh Singh, R.S.A. No. 190 of 1962. The main contention most seriously argued before us by Shri H. S. Doabia, on behalf of the vendees is that Bhopal Singh having joined with him Sarmukh Singh as a co-plaintiff in the pre-emption suit and Sarmukh Singh having been found by the learned Additional District Judge not to possess a right of pre-emption, Bhopal Singh's suit merits dismissal. Now that Sarmukh Singh, has withdrawn his appeal and got it dismissed, the order of the learned Additional District Judge that he had no such right has become final and conclusive and this, according to the learned counsel, adds to the strength of his objection. In support of his contention, he has drawn our attention to a large number of decisions of the Allahabad High Court for the proposition that a co-sharer claiming a right of pre-emption in respect of the sale of a share who joins a stranger (meaning

thereby a person who has no such right) with himself in suing to enforce such right thereby forfeits his right. I do not consider it necessary to reproduce all the decisions cited on behalf of the appellant before the referring Bench, on which reliance has been repeated before us. It would suffice to note only four of them—

(1) *Bhawani Prasad* v. *Damru* (1);

(2) *Bhupal Singh* v. *Mohan Singh* (2);

(3) *Dwarka Singh* v. *Sheo Shankar Singh* (3); and

(4) *Badri Datt* v. *Shri Kishan* (4).

Shri Doabia has, I may point out, also sought some assistance from *Rajjo* v. *Lalman* (5). Reference has also been made to a Bench decision of the Patna High Court in *Mahant Rokh Narayan Puri* v. *Rachhya Singh* (6); in which it is laid down that "where a person entitled to claim pre-emption under the Muhammedan Law joins with himself as co-plaintiff a person who has no such right, he forfeits his own pre-emptive right and the suit must be dismissed as against both". It is emphasised that the right of pre-emption is a right to prior offer to purchase and is accordingly in derogation of the right of the owner to sell the property to whomsoever he likes. Considered from this point of view, right of pre-emption must be considered to be a weak right which is not looked at with favour by the Court, and indeed at times this right has been described to be aggressive and even piratical. Shri Doabia thus presses us to fall in line with the view adopted by the Allahabad High Court that on grounds of justice, equity and good conscience, whenever a plaintiff with a superior right of pre-emption elects to join with him, as a co-plaintiff, a stranger, meaning thereby a person who has no right of pre-emption, he must, as a matter of law, be held to have forfeited his right of pre-emption, a subsequent disassociation of such co-plaintiff with no right of pre-emption, the counsel adds, would be unavailing as the

(1) I.L.R. 5 All. 197.
(2) I.L.R. 19 All. 324.
(3) A.I.R. 1927 All. 168.
(4) A.I.R. 1954 All. 94.
(5) I.L.R. 5 All. 180.
(6) 90 I.C. 806.

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forfeiture once effected is incapable of being undone; the right so lost is, according to the argument, lost irretrievably.

The contrary view adopted in Punjab, says Shri Doabia, is unjust and inequitable and, therefore, deserves to be overruled. It is, however, not disputed that this view has consistently prevailed in Punjab without dissent since the year 1893 when the decision in *Sharaf, etc.* v. *Pir Baksh etc.* (7), was given dissenting from the Allahabad decision in *Bhawani Prasad's case.*

Shri Sarin has, on behalf of the respondent-pre-emptor, pointed out that in so far as the Allahabad view is concerned, there is a statutory provision in the shape of section 21, Agra Pre-emption Act (No. 11 of 1922), which expressly provides that where a person having a right of pre-emption sues jointly with a person not having such right, he shall lose his right, and also where a pre-emptor of a higher class sues jointly with a pre-emptor of a lower class, he shall have no higher right than the person with whom he sues. It is argued that this section clearly provides a distinguishing feature of the law with which the Allahabad High Court was concerned in the cases decided by it. Shri Sarin has also sought some indirect support from Order XX, Rule 14, Civil Procedure Code, but this provision, in my view, is of little assistance to the counsel. Nor can he get much help in support of his contention from section 15, Punjab Pre-emption Act, on which an attempt has been made to found some argument. Finally, the counsel has taken stand on the doctrine of *stare decisis* and has argued that a view which has held the field in the Punjab for more than 70 years since 1893 should not be lightly overruled. The right of pre-emption is after all a statutory right and the Courts should not decline to enforce this right for reasons which are not cogent in law, merely because they are not favourably disposed towards such a right.

After considering the arguments urged and going through the authorities cited, I am unable to find any cogent and convincing ground for departing from the long course of decisions which have held the field in this part

(7) 83 P.R. 1893.

of the country since 1893. When I say so, I do not intend by any means to depart from or whittle down the recognised view that the right of pre-emption from the point of view of the vendee is a restriction on his right to hold the property and from the point of view of the vendor it is restriction on his right to dispose of the property to whomsoever he likes, and because of these two restrictions, the Courts do not generally look at this right with favour. The right of pre-emption lawfully created has to be respected and enforced by the Courts in accordance with the legislative intent and it is not permissible for them to decline to do so on account of any pre-disposed dislike for or prejudice against the pre-emptive right, except to the extent that the law so enjoins. Courts are under a solemn obligation to administer justice according to law. The observation in various decisions that it is open to a vendee to defeat a pre-emptor's claim by all legitimate means is consistent with this principle as clearly indicated by the word "legitimate". I may now turn to the decisions cited by the counsel giving rise to the two divergent views.

The Allahabad view relied upon on behalf of the appellants, as enunciated in *Bhawani Prasad's case*, proceeds on what was considered to be a principle of justice, equity and good conscience which justified forfeiture of the right of pre-emption on a pre-emptor joining with him a stranger in his suit for enforcing his right. This view was generally approved in a number of later decisions of that High Court. Mahmood, J., delivering the judgment on behalf of the Division Bench in the above case, observed as follows:—

> "It is clear that there exist no definite rules of substantive law by which questions of this nature, relating to the right of pre-emption claimed under the terms of the *wajib-ul-arz*, are governed. It is only on the broad principles of justice, equity and good conscience that such questions can be dealt with by the Courts. The right of pre-emption, though it has undergone some essential alterations, induced either by the force of custom or the express stipulations of coparcenary bodies of landed proprietors, is not traceable, at least in these provinces, to any sources other than the influence of the Muhammedan Law."

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After referring to a Full Bench decision of the Calcutta High Court and two Bench decisions of the Allahabad Court, the learned Judge proceeded to observe that in the absence of circumstances, to the contrary, the Court in administering equity in cases of pre-emption will follow the analogies furnished by the rules of the Muhammedan Law of pre-emption so long as those rules are consistent with the principles of justice, equity and good conscience. Then occur the following observations :—

> "The rule of law by which a person, entitled to pre-emption, forfeits his right is based upon the principles of equitable acquiescence, which forms one of the most important elements of restrictions imposed upon the vindictive or capricious exercise of the right of pre-emption. Those restrictions appertain to the very essence and nature of the right—restrictions which, if ignored, would defeat the policy on which the right of pre-emption is based. A person who, whilst possessing the pre-emptive right, takes part in transacting the sale to a stranger, or who, in purchasing property himself, joins a stranger in such purchase, cannot on the one hand, subsequently object to the sale which has with his acquiescence violated the pre-emptive right : nor, on the other hand, can he resist the claim of other pre-emptors who, in suing for pre-emption, vindicate the policy of the right. * * * * * * * *. Applying these principles to the present case, it seems to us that the very fact that Damru, in suing for pre-emption, joined with him two other persons who had no such right, must be taken to amount to such acquiescence in the sale as estops him in equity from complaining of the sale. * * * * * * * * * * * * * * * *. . In other words, Damru must be regarded to have foregone his pre-emptive right to the extent of the shares of his co-plaintiffs and could not, therefore, at all events contest the sale to that extent."

The learned Judge considered the case of a co-sharer entitled to pre-emption joining a stranger in purchasing the

property indistinguishable from the case of a co-sharer pre-emptor joining a stranger with him in his suit as co-plaintiff. In both the cases, the right of pre-emption would be lost. This view was expressly dissented from by a Bench of the Punjab Chief Court in *Sharaf's case.* Plowden, J. speaking for the Court, finding himself unable to assent to the view of the Allahabad High Court or to the reasoning upon which it was founded, proceeded to state that the analogy between a pre-emptor as purchaser joining a stranger with him in the purchase, and a pre-emptor as plaintiff joining with him a stranger as co-plaintiff was not so complete as necessarily to entail the same consequences. In the first eventuality, the pre-emptor purchaser in violation of the rules regulating pre-emption and his act is incapable of being undone, whereas in the second, the error is in the form of the claim made in Court and can be remedied without infringing the right of any person. In the former case, the question, according to the learned Judge, may be one of the law of pre-emption or of justice, equity and good conscience; in the latter it is a question of the law of procedure in enforcing by suit a right of pre-emption. To quote the learned Judge—

> "It may be quite just to say to a pre-emptor, you alone had a preferential right to purchase, but you and a stranger together had not: and yet quite unjust to say to him, you have a preferential right of pre-emption to sue the defendant, but you have forfeited it by the erroneous belief that your co-plaintiff had an equal right."

In *Sharaf's case* the Court was concerned with the latter contingency and a scrutiny of the facts and circumstances of the case before us discloses that the two cases (*Sharaf's* case and the present one) belong in essential aspects to the same category. The two decisions in the cases of *Bhawani, Prasad* and *Sharaf* represent the two divergent points of view adopted by the Allahabad High Court and the Punjab Chief Court, respectively, and the question is: Is the Punjab view so clearly erroneous and unjust or inequitable and the Allahabad view so indisputabiy more in accord with the principles of justice,

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equity and good consecience that this Court should depart from the view which has held the field in the Punjab since 1893 and adopt the Allahabad view ? After deep deliberation I must confess that I have not been able to persuade myself to hold, to put at the lowest, that the reasoning of the Allahabad High Court is more convincing and persuasive or more just and equitable than the reasoning of the Punjab Chief Court. The reasoning of Plowden, J. from one point of view may appear to be somewhat more consonant with the true dictates of justice, equity and good conscience, and also better designed to effectuate the true legislative intent. When two co-plaintiffs honestly believe that they are co-sharers and as such are entitled to pre-empt a sale, but on some technical ground one of them is found not to be a co-sharer, than one may legitimately ask, if it would not defeat the true legislative design as also the cause of substantial justice to hold that the other pre-emptor has forfeited his right or is estopped by reason of acquiescence from asserting the right merely because he had joined with him as co-plaintiff the former in the belief that he did possess the pre-emptive right. To find forfeiture and estoppel by equitable acquiescence, it may well be argued, Courts should look for something more in the form of absence of *bana fides*. The view adopted in *Bhawani Prasad's case*, it may be pointed out, appears mainly to have been inspired by the rule of Muhammedan Law. In the Punjab, so far as the right of pre-emption in respect of agricultural land and village immovable property is concerned, it may not be easily possible to say with confidence, in view of some earlier decisions of the Punjab Chief Court, that it has its roots solely in Muhammedan Law, though of course influence of Muhammedan Law in shaping such right cannot be denied or ruled out.

Adverting to the argument of *stare decisis*, it is correct that a decided case is worth as much as it weighs in reason and righteousness and no more and it would not be enough to say "Thus said the Court". A decided case has to prove its right to wield authority and to control a given situation by the degree in which it appeals to logic and serves the cause of justice as to all parties concerned. A precedent must not be allowed to control if its strength

depends only on its age, but may crumble at the slightest probing touch of reasoned scrutiny. To have binding value, therefore, a decision must command the support of reason, research, experience and intrinsic judicial consistency, for, adherence to precedent is designed to assure that justice flows from certainty and stability. If such adherence leads to injustice or uncertainty, then the precedent loses its guiding value. *Stare decisis* has at times been described metaphorically to be a sort of a viaduct meant for transporting the precious cargo of justice requiring its piers to be tested from time to time to make certain that they are sound and strong enough to support the weight. The discovery of a weak spot therein would render it unfit for the job. The appellants' learned rounsel has not attempted to find fault with the ratio and reasoning of the decisions of the Punjab Chief Court beyond what emerges from their comparison with the ratio and reasoning of the decisions of the Allahabad High Court. As observed eralier, it is not possible on the reasoning of the Allahabad decisions to hold that the Punjab decisions are clearly erroneous and, therefore, liable to be overruled. I cannot ignore the fact that the rule laid down in *Sharaf's case* has consistently been approved and followed by the Courts in this part of the country for more than seventy years, with the result that unless this view can be shown to be manifestly erroneous, I would feel disinclined to disturb the law even if it be assumed that another view may be equally possible to take.

There is one other factor of importance which cannot be ignored. The view of the Allahabad High Court has since been adopted by the legislature in the form of section 21 of the Agra Pre-emption Act, 1922. In the Punjab, the legislature has not considered it proper to enact any such provision. In 1893, it appears that the law on this point was contained in the Punjab Laws Act, 1872. When the Punjab Pre-emption Act, 1905, was enacted, separately codifying the law of pre-emption, the law-makers may well be presumed to be acquainted with the state of law and aware of the view consistently taken by the Punjab Chief Court, which was different from that of the Allahabad High Court, but no change in the law in this respect was made, apparently because it was not considered desirable. And again, when the Pre-emption

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Act of 1913 was enacted, no change was made in this respect. This Act has even in recent times been again amended in several respects, but no provision analogous to section 21 of the Agra Pre-emption Act has been incorporated therein. This is one reason the more why this Court should hesitate to overrule the decisions which have so long prevailed in this State.

I should, however, like to make it clear that we are only deciding the effect of Bhopal Singh having joined with him Sarmukh Singh as a co-plaintiff in this case; and the decision on this point is not intended to be an expression of opinion on any other question relating to forfeiture or estoppel by acquiescence of the right to pre-empt. To be more precise, we are not concerned with the effect of a vendee possessing a right of pre-emption, joining with him a person who does not possess such right, in the purchase of property, in respect of which transaction a suit for pre-emption may be instituted. Such cases deserve to be, and indeed have been, treated differently by the Lahore High Court in a number of decisions to which it is unnecessary to refer on this occasion.

Shri Doabia has next urged that the fact of Bhopal Singh having joined with him Sarmukh Singh as a co-plaintiff means that he is claiming for himself only partial pre-emption. The right of pre-emption being a right of substitution for the entire bargain, if Bhopal Singh is not claiming the whole property for himself alone, but for himself and for someone else then his suit for pre-emption must fail. To begin with there is no ground of appeal to this effect in this Court. Issue No. 5 on the plea of partial pre-emption was decided against the defendants with the observation that there was no evidence on the point. This plea was apparently not pressed in the lower appellate Court. But this apart, even otherwise, there is not much merit in the contention. The plaintiffs claimed to pre-empt the sale in its entirety and the lower appellate Court granted a decree in favour of Bhopal Singh in respect of the entire sale. There is thus little scope for the argument that the claim or the decree in appeal is hit by the rule of partial pre-emption; and this ground of challenge was perhaps rightly not included in the memorandum of appeal in this Court.

Shri Doabia has during the arguments also spent some time in urging that Bhopal Singh had claimed the pre-emption decree benami and for this reason also the suit for pre-emption deserves dismissal. He has in support of this argument referred us to Exhibit P. 3 (an agreement dated the 5th of May, 1960, between Bhopal Singh and Sarmukh Singh). Issue No. 6 deals with the plea of Collusion and *benami* nature of the suit. The trial Court came to the conclusion on this issue that Bhopal Singh was only a figurehead for getting the sale undone with a view to confer benefit on the vendors and through them on Sarmukh Singh. But this conclusion is followed by the words "* * * * * at any rate Bhopal Singh himself, as found to be not suing for himself but for another as well, is not entitled to the decree." On appeal the Additional District Judge on consideration of the evidence disagreed with the conclusion of the trial Court that Bhopal Singh had instituted this suit on behalf of Bikram Singh vendor or for his benefit. Before us Shri Doabia has not argued that Bhopal Singh had instituted the present suit for the benefit of Bikram Singh. He has pressed the contention that this suit was instituted for the benefit of Sarmukh Singh and, therefore, it is *benami*. In this connection I find that ground No. 2 in the memorandum of appeal in this Court speaks of Bhopal Singh being a mere figurehead for the benefit of the vendors, which ground is inadmissible on second appeal in view of the bar created by section 100, Civil Procedure Code. It is perhaps for this reason that this precise challenge is not pressed in this Court. Grounds Nos. 4 and 5 are undoubtedly more broadly worded, but a reference to the decisions quoted in ground No. 5 clearly suggests that the plea of *benami* had reference to the pre-emptor being *benamidar* of the vendor. The contention, that merely because Bhopal Singh has entered into an agreement with Sarmukh Singh for financing the present litigation, it must be held that Bhopal Singh is a *benamidar* and Sarmukh Singh the real pre-emptor, thereby entitling dismissal of the suit, is not easy to uphold. No principle nor any precedent has been cited in support of this submission. It is perhaps correct that a *benami* pre-emptor is an inadmissible notion and a pre-emptor cannot acquire property by pre-emption for another; the right being a personal one exercisable only for the pre-emptor's own benefit; but this plea must be established by the strictest evidence. And a plaintiff in a pre-emption suit cannot be

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held disentitled to a decree merely because in order to raise funds for the litigation, he has entered into an agreement with another person as to what he would do with the property when he gets it. Any subsequent transfer by the successful plaintiff-pre-emptor after he has obtained the decree may give rise to a fresh cause of action to other pre-emptors. The Court, it seems to me, is scarcely concerned with the question as to how the plaintiff has raised funds for prosecuting the suit. This principle of law was accepted by the trial Court on the authority of *Mst. Gogi* v. *Chiragh Ali* (8), which has later been approvingly referred in *Mst. Dhapan* v. *Shri Ram* (9). The appellant's learned counsel has not drawn our attention to any binding precedent holding to the contrary or casting doubt on this view. This contention thus also fails and is repelled.

As a result of the foregoing discussion, this appeal fails and is dismissed, but in the circumstances of the case, there would be no order as to costs.

Falshaw, C.J. D. FALSHAW, C.J.—I agree.

Harbans Singh, J. HARBANS SINGH, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before S. B. Capoor and Inder Dev Dua, JJ.

BABY KARAN AMOL SINGH,—*Appellant*

versus

TIKKA RATTAN AMOL SINGH AND OTHERS,—*Respondents*

Regular First Appeal No. 135 of 1956.

1965

May, 12th

Transfer of Property Act (IV of 1882)—S. 41—Principle underlying— Impartible and inalienable estate—Partition and alienation of, effected before the birth of the next heir—Whether can be challenged by him—Cis-Sutlej States—Buria Estate in Ambala District—Whether governed by rule of primogeniture and is impartible and inalienable.

(8) 1950 P.L.R. 387.
(9) 1959 P.L.R. 774.