

the circumstances of this case itself to induce us to draw such a distinction here, and it is impossible to avoid remarking that if matters of feeling can be admitted, and we are not sure they should not in arriving at the amount of what is a reasonable allowance, the case of a "widowed mother" deprived of her only son and the contingent advantages that might have accrued to her had he survived seems the more deserving of sympathy and consideration. It is a fact not to be lost sight of in this case that, down to the death of the respondent's son, Rudr Mani Singh, on the 2nd December, 1876, the appellants made due provision for her and her child according to their position and the family custom, but immediately after the latter's decease they stop the allowance not only for the one but as to both. Such a proceeding appears indefensible and altogether inconsistent with the position they now take up. They are actually in enjoyment of the profits of the share of the villages to which, had the respondent's husband lived, he would have been entitled, and it is relatively to the amount of these profits that the sum to be allowed here should be calculated. No precedents were quoted to us fixing any principle of computation to apply to a case like the present, and it may well be that there are none, for the question that now arises involves equitable considerations that must of necessity be affected by the peculiar circumstances of each individual case. In our opinion this appeal should be dismissed and the order of the Subordinate Judge be affirmed with costs.

Appeal dismissed.

Before Mr. Justice Oldfield and Mr. Justice Straight.

LACHMI NARAIN LAL AND ANOTHER (DEFENDANTS) v. SHEOAMBAR LAL AND OTHERS (PLAINTIFFS).*

Pre-emption—Limitation—Act XV of 1877 (Limitation Act), sch. ii, art. 10.

Held in a suit for pre-emption, where the property had been purchased by the mortgagee in possession, that the purchaser obtained physical possession of the property under the sale, not from the date of the sale-deed, but when the contract of sale became completed.

Held, therefore, that, the contract of sale having become completed on the payment of the purchase-money, the suit being brought within one year from the date of such payment, was within time.

* Second Appeal, No 1371 of 1878, from a decree of Rai Bhagwan Prasad Subordinate Judge of Azamgarh, dated the 17th September, 1878, modifying a decree of Munshi Mata Din, Munsif of Nagra, dated the 15th May, 1878;

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KUMAR.

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P.
BHOAMBAR
LAL.

THIS was a suit for pre-emption founded upon a contract contained in a village administration-paper. The facts of the case are sufficiently stated for the purposes of this report in the judgment of the High Court, to which the defendants appealed from the decree of the lower appellate Court in the favour of the plaintiffs. The defendants contended that the suit was beyond time, not having been instituted within one year from the date of the sale.

Lala Lalta Prasad, for the appellants.

The *Senior Government Pleader* (*Lala Juala Prasad*) and *Munshi Hanuman Prasad*, for the respondents.

The judgment of the Court, so far as it related to the above contention, was as follows :

OLDFIELD, J.—The plaintiffs sue to obtain possession of a certain share in property sold under a deed of sale dated 15th October, 1873, to the defendants by right of pre-emption under the conditions of the administration-paper of the mauza. It appears that the vendees are mortgagees in possession of the property, and, under the terms of sale, Rs. 200 were to be paid in cash to the vendor (mortgagor), and Rs. 98 to go in redemption of the mortgage. The plaintiffs brought a suit asserting their right to recover the property sold by pre-emption, but it was dismissed on 31st March, 1875, by the Court of first instance, on the ground that the sale contract had not become complete so as to give a right of pre-emption by reason of the vendor not having received the purchase-money, and this decision was affirmed in appeal. The vendor subsequently sued to recover the purchase-money with interest from the vendees, and obtained a decree on the 13th March, 1877, for Rs. 298, the consideration of the sale, and Rs. 70 interest. The plaintiffs have now brought the present suit, and the lower appellate Court has decreed their claim, subject to their depositing in Court, within thirty days of the decree becoming final, Rs. 200 payable as purchase-money, and Rs. 98 for redemption of the mortgage. The objections taken in second appeal are invalid. The limitation law which governs this case is Act XV of 1877, and the period will run from the date on which the purchaser takes under the sale sought to be impeached physical pos-

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session of the property sold. As the purchaser in the case before us was also the mortgagee in possession, he must be held to have taken physical possession under the sale from the date when the contract of sale became complete; his possession as mortgagee became then possession as proprietor under the sale, and with reference to the former decision between the parties, the contract only became completed on the payment to the vendor of his purchase-money, and it is not urged that a year has elapsed from that date so as to bar the suit. There is nothing to show that the lower appellate Court has mis-construed the terms of the administration-paper which support the plaintiffs' preferential right of pre-emption. The second objection fails, as we cannot re-open a question decided between the parties in the former suit. The fourth and fifth pleas have no force. The plaintiffs cannot be liable to pay to defendants the interest decreed against them in the suit brought by the vendor to recover his purchase-money; it was no part of the purchase-money, which is all the plaintiffs can be called on to pay, and the former suit brought by the plaintiffs will be no bar to the present suit, as with reference to the decision in the former suit, the plaintiffs have now obtained a new cause of action.

The appeal is dismissed with costs.

Appeal dismissed.

FULL BENCH.

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Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, and Mr. Justice Oldfield.

GAURI SHANKAR AND ANOTHER (PLAINTIFFS) v. MUMTAZ ALI KHAN
(DEFENDANT).*

Government Ferry—Lease—Regulation VI of 1819—Illegality of Contract—Act IX of 1872, s. 23.

M took a lease for three years of a Government ferry and covenanted with the Magistrate, who granted the lease, not to underlet or assign the lease without the leave or license of the Magistrate. *M* subsequently admitted *B* as his partner to share with him equally in the profits to be derived from the lease. *Held* that such partnership was not void by reason of the covenant not to underlet or assign the lease.

Special Appeal No. 119 of 1872, decided on the 1st August, 1872, (1) overruled.

* First Appeal, No. 111 of 1878, from a decree of Maulvi Nasar-ul-lah Khan, Subordinate Judge of Banda, dated the 22nd July, 1878.

(1) Unreported.