

it was borrowed for her.' These passages seem to me to be closely applicable to the circumstances of this case.

With reference to the observations of the learned Chief Justice, I have only to add that in all these transactions, the important thing to see is what was actually done. In the present case there is nothing to show that this large sum was ever utilized for the ladies' benefit, and there is no satisfactory evidence to show that they took part in the execution of the *mukhtar-nama*, or understood its contents, or that they were aware of the existence of the bond, or that it was executed with their consent. The findings of the lower Court are satisfactory, and I would not interfere.

Appeal dismissed.

Before Mr. Justice Oldfield and Mr. Justice Tyrrell.

KOJI RAM (PLAINTIFF) v. ISHAR DAS AND ANOTHER (DEPENDANTS *)

Suit for money paid by a pre-emptor under a decree for pre-emption which has become void—Act XV of 1877 (Limitation Act), sch ii, Nos. 62, 97, 120—Suit for money had and received for plaintiff's use—Suit for money paid upon existing consideration which afterwards fails.

Putting an appeal from a decree for pre-emption in respect of certain property conditional upon payment of Rs. 1,595, the pre-emptor decree-holder, in August, 1880, applied for possession of the property in execution of the decree, alleging payment of the Rs. 1,595 to the judgment-debtors out of court, and filing a receipt given by them for the money. This application was ultimately struck off. In April, 1881, judgment was given in the appeal, increasing the amount to be paid by the decree-holder to Rs. 1,994, which was to be deposited in court within a certain time. The decree-holder did not deposit the balance thus directed to be paid, and the decree for possession of the property accordingly became void. In 1882, the decree-holder signed to K his right to recover from the judgment-debtors the sum of Rs. 1,595 which he had paid to them in August, 1880. In December, 1883, K sued the judgment-debtors for recovery of the Rs. 1,595 with interest.

Held that No. 62 of the Limitation Act did not govern the suit, but that No. 97, and, if not, No. 120, would apply, and the suit was therefore not barred by limitation.

THE suit out of which this appeal arose was brought under the following circumstances:—In February, 1880, one Ram Lal obtained a decree for pre-emption in respect of certain property,

* Second Appeal No 1264 of 1885, from a decree of W. R. Barry, Esq., Additional Judge of Aligarh, dated the 30th July, 1885, reversing a decree of Maulvi Sami-ullah Khan, Subordinate Judge of Aligarh, dated the 22nd May, 1884.

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conditional upon payment of Rs. 1,595 to the purchasers. This decree was upheld on appeal by the District Judge in April, 1880, and the purchasers preferred a second appeal to the High Court. Pending this appeal, Ram Lal, in August, 1880, applied for possession of the property in execution of the decree in his favour, alleging that he had paid the sum of Rs. 1,595 to the judgment-debtors out of court, and filing a receipt given by them for the money. This application was ultimately struck off, in consequence of the applicant's failure to comply with an order directing him to file a copy of the decree. After this the High Court, in April, 1881, gave judgment in the appeal, which it so far allowed as to increase the amount to be paid by the pre-emptor to Rs. 1,994-4, which sum was to be deposited in court within one month from receipt of the decree in the lower Court. Ram Lal did not pay the balance thus directed to be paid to the purchasers, and the decree for possession accordingly became void. In February, 1882, Ram Lal assigned to the plaintiff in the present suit, Koji Ram, his right to recover from the purchasers the sum of Rs. 1,595 which he had paid to them in August, 1880. In March, 1882, the plaintiff made an application in the execution-department for recovery of the amount; but the purchasers objected that he was not a "representative" of Ram Lal within the meaning of s. 244 of the Civil Procedure Code, and therefore could not take proceedings in the execution-department. This objection was allowed; and the plaintiff in consequence brought the present suit in December, 1883, for recovery of the Rs. 1,595 with interest thereon, in the Court of the Subordinate Judge of Aligarh. That Court decreed the claim for Rs. 1,595, but disallowed the claim for interest. The defendants appealed to the District Judge of Aligarh. That Court held that the suit was barred by limitation, with reference to No. 62, sch. ii of the Limitation Act, as a suit "for money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use," the period prescribed for which was three years from the date when the money had been received by the defendants.

In second appeal by the plaintiff it was contended on his behalf that the District Judge was wrong in applying to the suit

the provisions of No. 62 of the Limitation Act, and that the limitation properly applicable was that provided by No. 120.

Babu *Jogindro Nath Chaudhri*, for the appellant.

Pandit *Ajudhia Nath* and Pandit *Sundar Lal*, for the respondents.

OLDFIELD and TYRRELL, JJ.—We are of opinion that art. 97 of the Limitation Act may be applied to this suit, and, if not, art. 120 would apply. The suit is not governed by art. 62, as the Judge considers. In the above view the suit is not barred by limitation, and we set aside the decree of the lower appellate Court, and remand the case for trial on the merits. Costs to follow the result.

Appeal allowed.

Before Mr. Justice Tyrrell and Mr. Justice Mahmood.

HABIB-UN-NISSA AND ANOTHER (PLAINTIFFS) v. BARKAT ALI AND ANOTHER (DEFENDANTS)*

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Muhammadan law—Pre-emption—Acquiescence in sale—Relinquishment of right.

According to the Muhammadan law, if a pre-emptor enters into a compromise with the vendee, or allows himself to take any benefit from him in respect of the property which is the subject of pre-emption, he by so doing is taken to have acquiesced in the sale and to have relinquished his pre-emptive right.

In a suit to enforce the right of pre-emption founded on the Muhammadan law it appeared that the purchasers, by an agreement made with the plaintiffs on the same date as the sale in respect of which the suit was brought, agreed to sell the property to the plaintiffs any time within a year, and if the latter paid the price and purchased the property for themselves.

Held that by the very fact of their taking the agreement, the plaintiffs had relinquished their right of pre-emption, and were precluded from enforcing it.

THE plaintiffs in this case, Muhammadans, claimed to enforce the right of pre-emption in respect of the sale of a house and certain land appertaining thereto. The right was founded on Muhammadan law. The vendor, Barkat Ali, and the vendee, defendants, were Muhammadans, and the property was sold on the 27th October, 1883. On the day of the sale the vendee gave the plaintiffs an agreement in writing to sell the property to them, the terms of which were as follows:—“I have to-day purchased the house of

* Second Appeal No. 1305 of 1885, from a decree of H. A. Harrison, Esq., District Judge of Meerut, dated the 24th June, 1885, confirming a decree of Babu Mritonjoy Mukerji, Subordinate Judge of Meerut, dated the 15th April, 1885.