

and not for the plaintiffs or the judgment-creditors whose interest they purchased, we are bound to decide that art. 120 of the second schedule of the Limitation Act of 1877 is the article which applies to this case and that the suit is consequently within time. The other issues have been found in the Court below in favor of the plaintiffs. Those findings have not been objected to by objections filed under the Code of Civil Procedure. We must consequently accept them, as we do. We accordingly decree the appeal with costs and pass a decree for the amount claimed by the plaintiffs, namely, Rs. 9,635-4-9 with 6 *per cent.* interest from the date of our decree and costs of both the Courts.

Appeal decreed.

Before Mr. Justice Straight and Mr. Justice Knox.

BALDEO SAHAI (DEFENDANT) *v.* BAIJ NATH (PLAINTIFF). *

1891
May 27.

Act IV of 1882 (Transfer of Property Act) s.s. 52 and 82—Contribution—Lis pendens.

Two properties, A and B, belonging to different owners, were mortgaged under a joint bond for the same debt. The mortgagee put his bond in suit, and having obtained a decree caused property A to be sold, the proceeds of which proved more than sufficient to satisfy the whole mortgage-debt. Before such sale, however, X had, in execution of a simple money-decree, acquired a share in property A. X accordingly sued for contribution from property B, in that, so far as his share in property A went, he had satisfied the mortgage-debt, and ultimately obtained a decree in his favor; but, during the pendency of that litigation, property B had been transferred to Y.

Held that Y must take the property subject to X's right to contribution from it in respect of the loss of his share in property A.

The facts of this case sufficiently appear from the judgment of Straight, J.

Mr. T. Conlan and Mr. Amir-ud-din, for the appellant.

Babu Jagindro Nath Chaudhri, for the respondent.

STRAIGHT, J.—It is unfortunate that the facts and dates relating to the circumstance out of which this litigation has arisen were

*Second Appeal No. 1562 of 1888 from a decree of Maulvi Muhammad Abdul Quaium, Subordinate Judge of Bareilly, dated the 27th March 1888, confirming a decree of Babu Ganga Prasad, Munsif, Bareilly, dated the 16th December 1887.

1891

BALDEO
SAHAI
v.
BAIJ NATH.

not more distinctly and specifically stated by the lower appellate Court in a more concise form. To put it shortly, the matter stands thus. In the year 1873, Ramji Mal and Nath Mal Das executed a simple mortgage for Rs. 625 in favor of one Bansi Dhar. As security for the loan, Ramji Mal mortgaged his 1 biswa 14 biswansis of Namdarganj, and Nath Mal Das his 1 biswa 5 biswansis of Siruli. In April 1877, the mortgagee, Bansi Dhar, put his bond in suit, and, having obtained a decree, caused Ramji Mal's 1 biswa 14 biswansis of Namdarganj to be brought to sale, and it was sold for Rs. 1,525, which was more than sufficient to satisfy and discharge the mortgage-debt. Bansi Dhar, therefore, disappears from the transaction and need not be further mentioned.

Prior to this sale the present plaintiff, Baij Nath, on the 23rd October 1876, in execution of a simple money-decree against Ramji Mal had acquired 17 biswansis 1 kachwansi out of the 1 biswa 14 biswansis of Ramji Mal's in Namdarganj. When, in execution of that decree upon the mortgage, the whole of Ramji Mal's interest in Namdarganj was sold, the plaintiff was deprived to the extent of the interest which he had acquired therein; namely, 17 biswansis 1 kachwansi. In other words, he, to the extent that that interest represented in the sale, satisfied and discharged the mortgage-debt. He therefore, in my opinion, became entitled to the equities provided for in s. 82 of the Transfer of Property Act, and, as standing in the shoes of Ramji Mal, he was entitled to call for contribution from Siruli in proportion to what Siruli should have paid to the mortgage-debt.

A suit was instituted by the plaintiff, therefore, against Ramji Mal and Nath Mal Das, Ramji Mal apparently being added more as a matter of form. By that suit the plaintiff in explicit terms claimed from the immovable property of Siruli its fair contribution to the mortgage-debt, which to the extent of his 17 biswansis 1 kachwansi in Namdarganj, he had had to pay. That suit went through three Courts, ending in the decree of this Court, by which it was found that the plaintiff was entitled to a contribution from Siruli of Rs. 401-5-2.

In my opinion that was not a mere money-suit. That was a suit which by operation of law affected the immovable property of Siruli and was directed towards obtaining from that property, Siruli, what by law it was bound to contribute under s. 82 of the Transfer of Property of Act. Now it is not denied that, pending that suit, and obviously for the purpose of defeating the just claim of the plaintiff, Siruli was transferred by Nath Mal Das to the present defendant, Baldeo Sahai. In my opinion this was a transfer *pendente lite* which would come within s. 52 of the Transfer of Property Act, and any such transfer so made would convey to the transferee that property with all the imperfections upon its head that it would be subject to under the suit that was then pending. Consequently the defendant, Baldeo Sahai, took the property in and under circumstances that constrain him to hold that property subject to the decree that was passed in that suit. The aim and object of the principle of *lis pendens* is to avoid multiplicity of litigation, and if some such doctrine were not to hold good, the party to a litigation in which immovable property was concerned might part with that property to a dozen different transferees, with the result that a dozen different suits would have to be brought for setting aside those transfers. For the reasons I have given I hold that the decree of the lower appellate Court is right, and that this appeal should be and it is dismissed with costs.

KNOX, J.—I concur.

Appeal dismissed.

Before Mr. Justice Straight and Mr. Justice Knox.

JASODA NAND AND ANOTHER (DEFENDANTS) v. KANDHAIYA LAL
(PLAINTIFF).*

1891
May 23

Pre-emption—Wajib-ul-arz, construction of—Muhammadian Law.

In a suit for pre-emption based on a *wajib-ul-arz* the material words of the *wajib-ul-arz* under the heading of "Custom for pre-emption" were as follows:—"At the time a proprietary share is transferred a right of purchase will vest, first, in a

* Second Appeal No. 1594 of 1888 from a decree of J. Deas, Esq., District Judge of Jaunpur, dated the 30th July 1888, reversing a decree of Maulvi Muhammad Said Khan, Subordinate Judge of Jaunpur, dated the 19th March 1888.