

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir
Pramada Chavan Banerji.

DRIGPAL SINGH AND ANOTHER (DEFENDANTS) V. KALLU AND
OTHERS (PLAINTIFFS)*

Act No. IX of 1908 (*Indian Limitation Act*), schedule I, article 134
—Limitation—Mortgage—Sale by mortgagee—Suit for redemption by mortgagor
against mortgagee and vendees—Plea of purchase for consideration Omission of
the words "in good faith" in article 134.

The omission of the words 'in good faith' from article 134 of the first
schedule to the Limitation Act of 1908 does not entitle a person who pur-
chases with full knowledge that his vendor's title is merely that of mort-
gagee to the benefit of that article.

THE facts of this case are fully set out in the judgement.

Mr. M. L. Agarwala, for the appellants.

Munshi Gulzari Lal, for the respondents.

RICHARDS, C.J., and BANERJI, J. :—This appeal arises out of
a suit to redeem a mortgage made in the year 1843. The
facts are a little complicated, but it is unnecessary to state them in
detail for the purpose of deciding the present appeal. It appears
that in the years 1878 and 1879 persons in whom the mortgagee
rights were then vested made transfers in favour of certain
persons who are now represented by the appellants. In these
transfers words are used descriptive of the interest transferred
which would be appropriate if the transferor was absolute owner
and not merely mortgagee. On the other hand, the words are not
altogether inappropriate as descriptive of the right of a mort-
gagee in possession. The lower appellate court has found, in
concurrence with the court of first instance, that the actual
interest which the transferors had at the date of the transfers
was that of mortgagees in possession. It has also found, (and
given good reasons for its findings) that the transferees knew
what the interest of the transferors was. After the transfer the
name of the transferee was entered in the revenue papers as owner
of the "mortgagee" interest. It is contended here that, notwith-
standing the findings of the court below, article 134 of the Limi-
tation Act bars the suit. Article 134 is as follows :—"To recover
possession of immovable property conveyed or bequeathed in
trust or mortgaged, and afterwards transferred by the trustee

*Second Appeal No. 572 of 1914, from a decree of H. E. Holme, District
Judge of Aligarh, dated the 6th of March, 1914, confirming a decree of Piare
Lal, Munsif of Jalesar, dated the 28th of May, 1913.

or mortgagee for a valuable consideration." The period is twelve years from the date of the transfer.

It is admitted that a mortgagor has sixty years within which to bring a suit for redemption. It is also admitted that where the mortgagee transfers his mortgagee rights as such the transferee stands in no better position than the transferor. It is, however, urged that if the words used in the deed of transfer are applicable to the transfer of an absolute interest, then article 134 applies, no matter whether the transferee was aware of the nature of the interest of the transferor or not. We find great difficulty in accepting this contention. The main argument in favour of it is based on a comparison between the words of article 134 in the recent Limitation Acts and article 134 in Act IX of 1871. In that Act the article was as follows:—"To recover possession of immovable property conveyed in trust or mortgaged and afterwards purchased from the trustee or mortgagee '*in good faith*' and for value."

It is said that the absence of the words "*in good faith*" in the recent Act shows that knowledge of the nature of the transferor's title is quite immaterial. Reliance is placed upon the case of *Yesu Ramji Kalnath v. Ballkrishna Lakshman* (1). This case seems to have been considered in a later judgement of the same Court in the case of *Pandu v. Vithu* (2). We think that there is no reason for holding that the omission of the words "*in good faith*" from the recent Act entitled the person who purchased with full knowledge that his vendor's title was merely that of mortgagee to the benefit of article 134. It may have been that the words were considered not altogether appropriate and that their retention would throw the *onus* on the transferee of proving that he had no knowledge of his vendor's title. This would be in many cases a hardship upon the person in possession of the property; he would have to prove a negative possibly after the lapse of many years. Whatever may be the reason for omitting the words, we cannot think that the Legislature intended that the mortgagee and his transferee should be able to shorten the period allowed by law for redeeming a mortgage by wilfully and to the knowledge of both misdescribing the interest

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transferred in the deed of transfer. In our opinion having regard to the findings of the court below that the transferees from the mortgagees had actual knowledge that their vendor's title was merely that of a mortgagee and that they had no belief that they were purchasing an absolute interest, the decision of the court below should be affirmed.

The only other point is a question of calculation. This is a matter which was not brought to the notice of the lower appellate court and we do not think it can be entertained here.

The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.

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Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.
SURAJ BHAN (DEFENDANT) v. SOMWARPURI (PLAINTIFF) AND RANDHIR SINGH (DEFENDANT)*.

*Act (Local) No. II of 1903 (Bundelkhand Alienation of Land Act), section 3—
Agricultural tribe—Suit for pre-emption—Sanction.*

The sanction contemplated in section 3 of the Bundelkhand Alienation of Land Act, 1903, applies to a voluntary transfer, and there is no provision in the Act which entitles an intending pre-emptor to get the sanction of the Collector to bring a suit for pre-emption.

Therefore a court is not entitled to grant a decree for pre-emption to a person who is not entitled to purchase the property in question not being a member of the agricultural tribe within the meaning of section 3 of the Bundelkhand Alienation of Land Act, 1903.

THE facts of this case are fully set out in the judgement.

Babu *Durga Charan Banerji* and Munshi *Haribans Sahai*, for the appellants.

The Honble Dr. *Sundar Lal*, for the respondents.

RICHARDS, C.J., and TUDBALL, J.:—This appeal arises out of a suit for pre-emption. The plaintiff pre-emptor has been found by both the courts to be a person who was not entitled to purchase the property in question having regard to section 3 of the Bundelkhand Alienation of Land Act, 1903, inasmuch as he was not a member of an agricultural tribe. The court of first instance dismissed the plaintiff's suit on this ground. The lower appellate court seems to have considered that the court might make a decree in the plaintiff's favour subject to the consent of the Collector to be subsequently

* First Appeal No. 65 of 1914, from an order of S. R. Daniels, District Judge of Allahabad, dated the 16th of February, 1914.