

not liable for the loss of the trunk and its contents. We allow the appeal and set aside the decrees of the courts below. The plaintiff's suit will stand dismissed with costs in all courts.

Appeal decreed.

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EAST INDIAN
RAILWAY
COMPANY.
v.
N. K. ROY.

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May 19.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.
RAM NATH (DEFENDANT). v. HARANI (PLAINTIFF) AND JHUNARI AND OTHERS (DEFENDANTS). *

Act No. II of 1903 (Bundelkhand Alienation Act) section 3—Equity of redemption sold and pre-empted—Sale of mortgagor's rights—Rights of purchaser.

The policy of the Bundelkhand Land Alienation Act is to prevent persons who are not members of an agricultural tribe from acquiring property and the provisions of section 3 apply to all permanent alienations even though they are brought about by the exercise of the right of pre-emption. Property in Bundelkhand was mortgaged and subsequently the equity of redemption was sold by the owners to a certain person from whom it was pre-empted. The Collector, however, did not sanction the sale but ordered the name of the purchaser to be recorded as a usufructuary mortgagee. Later, the mortgagors sold this very property to the plaintiff. He brought this suit to redeem it from the defendant who was in possession as a prior mortgagee. *Held*, that the plaintiff had a right to redeem the property from the defendant inasmuch as the ultimate right of redemption remained in the representatives of the original mortgagor. This right they were entitled to transfer to the plaintiff.

THE facts of this case were as follows :—

Pojan and Ganesh, the predecessors-in-title of Bandar and Rani Dulaiya, defendants Nos. 4 and 5 mortgaged the property in dispute with possession to Ram Nath, defendant No. 1, appellant in this case, and one Damoder whose heirs were also made defendants. Afterwards the defendants Nos. 4 and 5, sold the equity of redemption in the property to one Jagannath. One Ramnath Kayastha, not a party to this suit, brought a suit for pre-emption and obtained a decree but when he applied for mutation in his favour the Collector, acting under the Bundelkhand Land Alienation Act, 1903, refused to enter his name as purchaser of the equity of redemption, but recorded him as a usufructuary mortgagee of the equity of redemption, for twenty years. The material portion of the order was : " entry should be made in the papers to the effect that for twenty years from the 5th

* Second Appeal No. 459 of 1913, from a decree of J. H. Cuming, District Judge of Jhansi, dated the 29th of January, 1913, reversing a decree of Phul Chand Mogha, Munsif of Jhansi, dated the 31st of August, 1912.

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of October, 1909, the date of the decree, the right of redemption rests with Ram Nath Kayasth.

Subsequently the defendants Nos. 4 and 5 sold their rights in the property to the plaintiff who brought the present suit for redemption of the mortgage given to Ram Nath, defendant No. 1, and Damoder. The Mukhtar-i-am of the pre-emptor consented to the plaintiff's redeeming the property saying that his principals did not object to the plaintiff redeeming it. The defence was that the vendors had no right which they could transfer, and hence the plaintiff acquired no right to redeem. The court of first instance dismissed the suit but the lower appellate court reversed the decree. Defendant No. 1 appealed to the High Court.

Munshi *Harbans Sahai*, for the appellant.—

The Collector by his order could not nullify the decree of the Civil Court. The provisions of the Bundelkhand Land Alienation Act apply only to voluntary alienations and the present case being one of compulsory alienation they do not apply to this case. The permission of the Collector was not necessary for these alienations, and he could not therefore pass the order that the sale was to have the effect of a mortgage. After the sale to Jagannath the vendors lost their right in the property and the sale to the plaintiff did not pass any right to him. For a period of 20 years at least the right to redeem the mortgage in suit being vested in the pre-emptor, the vendor has no right to redeem and consequently his transferees also have no right to maintain this suit. Only Ram Nath pre-emptor has a right to redeem.

[TUDBALL, J.—Has not the plaintiff an interest in the property.]

He has an interest which has been postponed for twenty years. If the Collector had not interfered with the decree of the Civil Court the plaintiff would have lost all his rights. The order of the Collector therefore regulates the rights of the parties and it is that order which postpones the vendor's right to redeem. The statement of the Mukhtar-i-am of the pre-emptor does not constitute a transfer in favour of the plaintiff.

The Hon'ble Dr. *Tej Bahadur Sapru* (for *Babu Durga Charan Banerji*), for the respondents :—

THE right of pre-emption is a right of substitution. When Ram Nath Kayastha obtained a decree for pre-emption

against Jagannath Ahir, it must be taken that Jagannath's name was wiped out from the sale-deed, and that the real purchaser was Ram Nath Kayastha. Then the Collector intervened under the Bundelkhand Land Alienation Act and under section 14 converted the transfer to Ram Nath Kayastha into a usufructuary mortgage. Jagannath, the original vendee, having taken his money had no further interest left and if anybody became entitled to hold the equity of redemption by reason of the action of the Collector it was the original mortgagor's heir. Therefore the original mortgagor's heir could transfer the equity of redemption to the present plaintiff. It was clear that under the order of the Collector Ram Nath Kayastha could redeem the original mortgagee and so could the original mortgagor.

Munshi *Haribans Sahai* was heard in reply.

RICHARDS, C. J., and TUDBALL, J.—This appeal arises out of a suit to redeem a mortgage, dated the 18th of February, 1892. Ram Nath, the appellant, is one of the original mortgagees. He contends that the plaintiff has no right to maintain the suit. It appears that after the date of the mortgage the mortgagors sold their equity of redemption to one Jagan Nath Ahir. Ram Nath Kayastha (to whom we shall hereafter refer as "the pre-emptor") brought a suit for pre-emption against Jagan Nath Ahir, and obtained a decree which became final. When Ram Nath, the pre-emptor, applied to have his name recorded, the Collector under the provisions of Act II of 1903, made an order in November, 1910, refusing to sanction the permanent alienation in favour of the pre-emptor. By a later order he pointed out that all that he could do for the pre-emptor was to make him a usufructuary mortgagee for twenty years under the provisions of section 14 of the Act. But seeing that there was already a usufructuary mortgagee in possession, he pointed out that the only way in which the pre-emptor could get possession would be by redeeming the mortgage of the 18th of February, 1892. On the 29th of January, 1912, the representatives of the original mortgagors sold the property to the plaintiff. The plaintiff then instituted the present suit, which was met by the defence that the vendors of the plaintiff had no interest left of which they could make a transfer. It seems to us that this contention is not sound.

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The result of the pre-emption suit was that Jagan Nath Ahir ceased to have any interest in the property. The pre-emptor was substituted for him and the latter under the Collector's order was only a mortgagee. The consequence was that the ultimate right of redemption remained in the representatives of the original mortgagor. This right they were entitled to transfer to the plaintiff.

It is contended that having regard to the terms of the Collector's order the only person who could redeem the mortgage was Ram Nath, the pre-emptor. No doubt Ram Nath was given a right of redemption, but that did not and could not take away the ultimate right of redemption which must have been left (as we think) in the representatives of the original mortgagors. The mortgage of the appellant is a mortgage which can be redeemed at any time. It is quite unnecessary for us in the present case to decide whether or not Ram Nath, the pre-emptor, could have insisted upon remaining in possession for the whole of the twenty years even if the representatives of the mortgagors were to redeem it, nor is it necessary for us to express any opinion as to the effect of the consent which appears to have been given in open court by the pre-emptor to the redemption of the property by the plaintiff.

It is lastly contended that section 3 does not apply to alienations by pre-emption. We think that the section applies to all "permanent alienations" even though the alienation is brought about by the exercise of a right of pre-emption. The policy of the Act is to prevent persons who were not members of an agricultural tribe acquiring property. This would apply just as much to a person who was acquiring a permanent title by pre-emption as by voluntary alienations. We dismiss the appeal with costs.

Appeal dismissed.