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nion that the suit is the same as that referred to in article 42, but has stated that it was in substance such. I think, however, that only such suits are barred as are actually covered by the words of the different articles and not those which are in substance like suits described in those articles. In the present case the plaintiffs were compelled to pay money which the defendant was liable to pay, and the suit is based on an implied contract for re-imbursement. The suit is not brought under any of the sections of the Transfer of Property Act. I have been referred by learned counsel to other decisions of this Court, *Gaya Pande* v. *Amar Deo Pande* (1) and *Raza Husain* v. *Hasan Jan* (2). In those cases, however, the facts were not similar.

I set aside the decrees of the two subordinate courts and direct the court of the Munsif to return the plaint to the plaintiffs for institution of a suit in the Court of Small Causes having jurisdiction. Costs here and heretofore shall abide the result.

Decrees set aside.

APPELLATE CIVIL.

Before Mr. Justice Sulaiman and Mr. Justice Ashworth.

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November, 8.

PHUL CHAND AND ANOTHER (PLAINTIFFS) *v.* RAM NATH AND ANOTHER (DEFENDANTS).*

Act (Local) No. II of 1903 *(Bundelkhand Alienation of Land Act), section* 16A*—Act (Local) No. XI of* 1922 *(Agra Pre-emption Act), sections* 3, 7 *and* 12*—Pre-emption—Plaintiff not belonging to same agricultural tribe as vendor—Competence of Collector to sanction suit for pre-emption.*

Plaintiff claimed a right on the strength of a custom recorded in the wajib-ul-arz to pre-empt certain property, situated in Bundelkhand and sold by a co-sharer in the mahal to a

* Second Appeal No. 99 of 1926, from a decree of M. F. P. Herchenroder, District Judge of Cawnpore, dated the 13th of October, 1925, reversing a decree of Raghunath Prasad, Munsif of Banda, dated the 30th of March, 1925.

(1) (1924) 22 A.L.J., 855. (2) (1915) 13 A.L.J., 632.

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non-co-sharer. Both the vendor and the vendee were members of an agricultural tribe. The plaintiff was not; but he had obtained the Collector's sanction to bring suits to pre-empt under section 16A of the Bundelkhand Alienation of Land Act of 1903 as amended by Act No. IV of 1915.

Held, that the plaintiff had lost all right of pre-emption, not only because, after the passing of section 3 of the Pre-emption Act, 1922, he could not claim to pre-empt on the basis of custom, apart from the provisions of the Act itself, but also because the land being in Bundelkhand, he was barred from any right to pre-empt, which he would otherwise have had under section 12 of the Pre-emption Act, by section 7 of that Act. *Suraj Bhan* v. *Somwarpuri* (1), referred to.

THIS was a plaintiffs' appeal arising out of a suit for pre-emption of property situated in Bundelkhand, which was sold on the 22nd of December, 1923. The vendor was a member of an agricultural tribe and so were the vendees, but the vendees were not co-sharers in the village at all. The pre-emptors, on the other hand, were not members of the same agricultural tribe as the vendor, but were co-sharers, not only in the mahal but in the very *khata* in which the share sold was situated. Before bringing their suit for pre-emption the plaintiffs obtained the sanction of the Collector under the Bundelkhand Alienation of Land Act, section 16A, as amended by Act No. IV of 1915.

The plaintiffs based their claim mainly on the custom recorded in the wajib-ul-arz of the village. The defendants contested the suit on the ground that the plaintiffs had no right to maintain the suit and that they had no preferential right as against them.

The trial court came to the conclusion that although "purchase", in view of the pronouncement of this Court in the case of *Suraj Bhan* v. *Somwarpuri* (1) did not include "pre-emption", nevertheless "pre-emption" did

(1) (1915) I.L.R., 37 All., 662.

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include "purchase". It, therefore, came to the conclusion that the plaintiffs, having obtained the sanction of the Collector to pre-empt this property, were persons who were entitled to purchase it under the Bundelkhand Alienation of Land Act.

The District Judge took a contrary view. In his opinion the right of pre-emption was entirely distinct from the right of purchase, and was a mere right of substitution. He was also of opinion that the reference in section 7 of the Agra Pre-emption Act to the Bundelkhand Alienation of Land Act, 1903, did not necessarily imply a reference to that Act as amended in 1915. He was further of opinion that by implication section 16A of the Bundelkhand Alienation of Land Act must be deemed to have been repealed by section 7 of the Agra Pre-emption Act, although the said provision is not mentioned in the schedule of repealed Acts. He, therefore, dismissed the suit. The plaintiffs appealed.

Dr. *Kailas Nath Katju*, for the appellants.

Dr. *Surendra Nath Sen* and Mr. *A. Sanyal*, for the respondents.

THE judgement of SULAIMAN, J., after setting forth the facts as above, thus continued :—

In my opinion there are two questions which have to be considered separately. The first is whether the Agra Pre-emption Act does confer a right on the present plaintiffs to maintain the suit and the second is whether, if it does not, it takes away any right which they might have had independently of it.

Section 7 of the Agra Pre-emption Act provides that "nothing in that Act shall confer a right of pre-emption on any person who is, under the Bundelkhand Alienation of Land Act, 1903, not entitled to purchase the property in dispute." In my opinion this section was merely intended not to confer a right of pre-emption on any per-

son who was not entitled to purchase property in Bundelkhand. It does not mean that the section takes away the right of pre-emption of a person who had the right under the old Act.

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I am inclined to the view that the learned Judge is in error in thinking that a reference to the Bundelkhand Alienation of Land Act, 1903, does not imply a reference to the Act as amended in 1915. The Act was referred to by its short title, and one would imagine that the Act so referred to is the Act as amended up to date. It is, however, not necessary for the purposes of this appeal to express a final opinion on this point. Section 16A dealt with the right to pre-empt, whereas section 7 of the Agra Pre-emption Act speaks of "entitled to purchase." It is, therefore, not necessary to invoke the aid of the provisions of section 16A.

The learned Judge has erred in thinking that section 16A has by implication been repealed. That section conferred no substantive right on a pre-emptor where he had none before; it merely placed the obstacle of sanction in the way of his suing, when such right existed. Even if his right of pre-emption is destroyed it does not necessarily amount to a repeal of section 16A. I would not say that the Collector has no jurisdiction to grant such a sanction, but I would say that such a sanction, even if granted, is now futile.

I am, however, in agreement with the learned District Judge that in view of the long standing authorities of this Court it must now be taken as settled that a right of pre-emption is not the same thing as a right of purchase. This is now further made clear by the definition of right of pre-emption as given in section 4, sub-clause (9) of the Agra Pre-emption Act. It, therefore, follows that the sanction obtained by the plaintiffs to *pre-empt* the property cannot strictly be taken to be a sanction to *purchase* it.

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Now section 3 of the Bundelkhand Alienation of Land Act makes it clear that the plaintiffs are not of such a class as by right to be entitled to purchase the property, but they might, if they obtain the sanction of the Collector, become so entitled. The plaintiffs are not absolutely entitled to purchase; their right is conditional. Even assuming that after sanction they can be said to have become entitled to purchase, it seems clear that a person, so long as he has not actually obtained the sanction to purchase, has not become a person entitled to purchase even under that provision.

In this particular case the present plaintiffs never obtained a sanction to *purchase* the property. They merely obtained sanction to *pre-empt*. I am, therefore, unable to hold that they are "entitled to purchase" the property under the "Bundelkhand Act" within the meaning of section 7 of the Pre-emption Act. Section 7 of the latter Act accordingly does not confer on them the right to pre-empt this property.

The next question is whether it takes away any right which they had. I have already quoted the section *in extenso*, and remarked that the intention merely was not to confer a new right on persons who had not that right. The lower appellate court is, therefore, wrong in thinking that it was contemplated by this section to take away the right of pre-emption vested in persons who had the right independently of the Act.

There is, however, section 3 of the Agra Pre-emption Act, which was neither noticed by the courts below, nor referred to by counsel before us. That section provides :—

"No right of pre-emption shall be enforced in respect of any transfer made after the commencement of this Act of an interest in land in any area to which this Act applies, except in accordance with the provisions of this Act."

This is followed by a proviso that where there is no right of pre-emption under section 5, the Muhammadan law remains in force when the vendor and the pre-emptor are both Muhammadans. This proviso clearly shows that the section does not deal with procedure only, but affects substantive rights. It was obviously intended that in areas where the Act applies there can be no right of pre-emption except in accordance with the Act. The Pre-emption Act undoubtedly applies to Bundelkhand, and whatever right the present plaintiffs might have had independently of the Act, cannot now be enforced. They can only succeed if they are entitled under the Pre-emption Act to pre-empt. Although the Act applies to them, and they would come within the classes of persons mentioned in section 12, they are debarred from taking advantage of these provisions because section 7 expressly prevents the Act from conferring any benefit on them. The result is that section 3 takes away any right that they might have had independently of the Act, and section 7 prevents the conferring on them of any right under the Act. Thus they have lost all right of pre-emption. If such a result was not contemplated by the Legislature, there may have to be a further amendment of the Pre-emption Act. But as the provisions stand, I can come to no conclusion other than that indicated above. I would, therefore, dismiss the appeal.

ASHWORTH, J. :—I concur in the orders dismissing these appeals. The plaintiffs appellants claimed a right to pre-empt certain property sold in Bundelkhand by a co-sharer in the mahal to a non-co-sharer. The vendor was a member of an agricultural tribe. The plaintiffs were not; but they had obtained the Collector's sanction to bring suits to pre-empt under section 16A of the Bundelkhand Alienation of Land Act, 1903.

The Subordinate Judge decreed the suit. Mr. Herchenroder, District Judge of Cawnpore, dismissed it hold-

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ing that the last-named section was impliedly repealed by the Agra Pre-emption Act, 1922, being inconsistent with its general policy and that section 7 of the Pre-emption Act barred a claim to pre-emption under the statutory provisions of section 12 of that Act.

Section 7 of the Agra Pre-emption Act, 1922, runs as follows :—

> "Nothing in this Act shall confer a right of pre-emption on any person who is, under the Bundelkhand Alienation of Land Act, 1903, not entitled to purchase the property in dispute."

The Subordinate Judge held that this was no bar to the plaintiffs' suit because the words in section 7 of the Pre-emption Act "entitled to purchase" would include a person given such sanction by the Collector. The District Judge held that section 16A of the Bundelkhand Alienation of Land Act could not be invoked because it was not contained in the Bundelkhand Alienation of Land Act, 1903, but was added by an amending Act in 1915. He, therefore, held that "entitled to purchase" under the Bundelkhand Alienation of Land Act, 1903, would not include a person who obtained the Collector's sanction under section 16A to bring a suit for pre-emption. Further he held that the Agra Pre-emption Act must be deemed to have repealed any right of pre-emption conferred by the Bundelkhand Alienation of Land Act, even though there was no provision in the Pre-emption Act expressly repealing the Bundelkhand Alienation of Land Act as a whole or repealing in particular section 16A of that Act, as amended by the Act of 1915.

The reasons just stated do not commend themselves to me. A right to purchase is different from a right to pre-empt. The right of pre-emption is merely a right of substitution. Nor can a sanction to pre-empt be construed as a sanction to purchase. Separate provisions of the Bundelkhand Alienation of Land Act apply to each

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kind of sanction and they cannot be confused. On the other hand, the reference in section 7 of the Pre-emption Act to the Bundelkhand Alienation of Land Act, 1903, must be construed to be a reference to that Act, as amended by the amending Act of 1915. When a short title is given in an original Act, the Act, however subsequently amended, can be called by that short title. To hold otherwise would be to hold that where the Legislature had prescribed a short title it was necessary to use a longer one. An amended Act is not two Acts but one Act. Again, the District Judge was wrong in inferring that an intention should be ascribed to a later Act to repeal the provisions of an earlier Act on general principles. The former enactment must be either specifically repealed or its continuance must be inconsistent with a provision of a later Act, in which case repeal will be deemed by necessary implication.

The correct view of this matter appears to me to be as follows. Section 16A of the Bundelkhand Alienation of Land Act only enables a Collector to sanction a suit for pre-emption where, but for the provisions contained in the earlier part of the section, the applicant for sanction has a right to pre-empt based on custom or contract. The sanction of the Collector does not create a substantive right, but is merely necessary for the otherwise existing substantive right to be exercised. The right of the plaintiff to pre-empt in this case was based on custom. That right which existed (subject to the restrictions on its exercise imposed by the said section 16A) up to the passing of the Agra Pre-emption Act ceased to exist when section 3 of the Pre-emption Act was enacted. This is the important section which the District Judge has overlooked. The effect of that section is clearly, as described in the marginal note, to abolish customary and other rights of pre-emption previously existing, excepting under the Muhammadan law. The plaintiff must claim

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a statutory right under the Agra Pre-emption Act or he cannot succeed. Such a right is barred by section 7 of the Agra Pre-emption Act, because the plaintiff is admittedly not entitled to purchase the property in dispute under the Bundelkhand Alienation of Land Act, 1903, even when amended by the Act of 1915. To discover what persons are entitled to purchase under the Bundelkhand Alienation of Land Act, 1903, we must refer to section 3 of that Act. That section provides that any person is entitled to purchase from an alienor who is not a member of an agricultural tribe or is a member of the same tribe as himself, etc. These conditions are admittedly not satisfied in this case. Sub-section (2) allows the Collector to sanction previously or retrospectively a purchase by any one, but sub-section (2) may be ignored for the purpose of interpreting section 7 of the Agra Pre-emption Act. For it is obvious that the Collector could never give a sanction to *purchase* to a person claiming to pre-empt and for these reasons no one would claim to pre-empt who could purchase directly. If there was no desire by the owner to sell, sanction would be clearly improper. Again, if the owner had already sold validly to another person, sanction would be improper. So there could never be a case of a person claiming to pre-empt getting sanction to purchase from the Collector, unless we are to suppose that the Collector might give a sanction to purchase merely in order to assist a would-be pre-emptor to overcome the bar imposed on him by section 7 of the Agra Pre-emption Act. On the principle that officials are presumed to do the right thing (*omnia praesumuntur rite et sollemniter esse acta*), we cannot suppose that the Collector would do anything of the kind. Apart from this, it is clear that the phrase "entitled to purchase" as used in section 7 of the Agra Pre-emption Act only refers to the persons given an unqualified right (i.e., a right independent of the Col-

lector's sanction) by section 3 of the Bundelkhand Alienation of Land Act. The operation of section 7 of the Agra Pre-emption Act cannot have been intended to depend upon the Collector's sanction. This section 7 appears to have been hastily added at a very late date in the proceedings culminating in the passing of the Agra Pre-emption Act, and although this fact cannot be adduced as an argument to control the meaning of section 7, it explains why reference in section 7 was not confined to the persons entitled to purchase the property in dispute under sub-section (1) of section 3 of the Bundelkhand Alienation of Land Act. Specification of sub-section (1) would have made the matter clearer, but would not have affected the meaning to be attached to section 7. A person claiming pre-emption could never have been given sanction by the Collector to purchase for the reasons stated.

I, therefore, hold that the decision of the District Judge was correct. The plaintiff's suit must fail not only because, after the passing of section 3 of the Agra Pre-emption Act, 1922, he could not claim to pre-empt on the basis of custom, but also because the land being in Bundelkhand, he was barred from any right to pre-empt which he would otherwise have had under section 12 of the Pre-emption Act by section 7 of that Act. I would, therefore, dismiss these two appeals with costs.

BY THE COURT :—Both the second appeals Nos. 99 and 100 of 1926 are dismissed with costs.

Appeal dismissed.