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be said on behalf of the other view which has not already been said. We agree with the decision on this further ground. The ordinary meaning of "to pre-empt" is to purchase in preference to others, and pre-emption is the effect of the purchase. The vendee, if he is successful, does in fact pre-empt and is, therefore, properly spoken of as a person claiming pre-emption. Whereas "the right of pre-emption" is spoken of in other parts of the Act, in this particular sub-section the word used with reference to what is being claimed is simply pre-emption. We are further of opinion that this interpretation satisfies another test, namely, the true construction of section 10 where it is quite obvious that the expression "equal" or "inferior" right of pre-emption is used with reference to the vendee. It has been found that the plaintiff is related to one of the vendors and the husband of the other vendor within four degrees. The wajib-ul-arz filed shows that the property in question was obtained by one of the vendors and the husband of the other vendor from their fathers, respectively, who were own brothers. The appeal must be allowed and the suit decreed.

Appeal allowed.

MISCELLANEOUS CIVIL.

1925
December, 23.

Before Mr. Justice Dalal and Mr. Justice Boys.

CHITAR MAL (PLAINTIFF) *v.* PANCHU LAL AND OTHERS (DEFENDANTS).*

Act No. IX of 1908 (*Indian Limitation Act*), *section* 7; *schedule I, article* 144—*Adverse possession—Idol—Alienation of property belonging to an idol.*

An idol is under no disability of the kind referred to in section 7 of the Indian Limitation Act, 1908; and if property

* Miscellaneous Case No. 668 of 1925.

belonging to it be alienated by the manager, adverse possession runs against the idol just as against any other person. *Damodar Das* v. *Lakhan Das* (1) and *Jagadindra Nath Roy* v. *Hemanta Kumari* (2), referred to.

THE facts of this case were as follows :—

Two brothers, Ram Narain and Jai Narain owned a house in a street in Ajmere in equal shares. Jai Narain made a gift of his share on the 9th of January, 1903, to the idol of Shri Chaturbhujji Maharaj installed in a temple in Ajmere. Under the deed of endowment he gave directions as to the use to be made of the income derived from the rent of half the house. The defendant Musammat Bishni is widow of a son of Ram Narain. On the 17th of April, 1905, the managers of the temple sold the gifted portion of the house to Musammat Bishni. On the 5th of December, 1918, plaintiff, son of Jai Narain who was dead at the time, sued for a declaration that the property in suit consisting of half the house formerly owned by his father was trust property; that the transfer of the said property to Musammat Bishni and her adopted son Panchu was null and void and that the property might be made over to the trustees of the temple of Shri Chaturbhujji after dispossession of the two defendants Nos. 1 and 2.

The defendants were Musammat Bishni, her adopted son Panchu and 11 other persons of the Agarwal-Marwari community of Ajmere who are described in the plaint as "panchas" of the Biradri (brotherhood) of the Agarwal-Marwaris of Ajmere. The allegation in the plaint of transfer to both Musammat Bishni and her adopted son was incorrect. The sale was made in favour of Musammat Bishni alone, the adoption having taken place subsequent to the date of sale.

(1) (1910) I.L.R., 37 Calc., 885. (2) (1904) 31 I.A., 203.

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The suit was instituted more than 12 years after the date of sale, so it was pleaded in paragraph 11 of the plaint that under the provisions of section 10 of the Limitation Act the bar of limitation was saved. This plea was decided against the plaintiff and the reference to us does not cover that point.

The plaintiff, having lost his case in two Courts in Ajmere, asked for a reference to the High Court under section 17 of the Ajmere Courts Regulation, No. I of 1877.

On this reference—

Dr. *Surendra Nath Sen*, for the applicant.

Dr. *M. L. Agarwala* and Munshi *Panna Lal*, for the opposite parties.

The judgement of the Court (DALAL and BOYS, JJ.), after setting forth the facts, thus proceeded:

The statement submitted by the learned Additional District Judge has referred to us the following questions for decision:—

(1) Whether the deed, dated the 17th of April, 1905, could constitute an alienation of the dedicated property (waqf) which was under the management of the Marwari faction of the *biradri* of Agarwals at Ajmere and thereby give rise to adverse possession.

(2) Whether respondent No. 1 could acquire any title to the said property.

(3) Whether in the circumstances of the present case respondent No. 1 could claim the benefit of the law of limitation, especially in view of paragraphs 1 and 2 of the written statement.

We shall take up issue No. 2 first, according to the sequence in which the case was argued by the plaintiff's learned counsel Dr. *Sen*. He argued that an idol suffered the disability of perpetual minority,

so any suit by an idol at any period of time after the date of the transfer would be saved from the bar of limitation under the provisions of section 7 of the Limitation Act. He based his argument on a tentative opinion put forward by the learned author of a treatise on Hindu Law (Sastri's Hindu Law). At page 726, Chapter XIV of his book, 5th edition, the present editor of the book has made the suggestion in the following words :—

"As regards limitation it should be considered whether section 7 of the Limitation Act is not applicable to a suit to set aside an improper alienation by a sebait of the property belonging to a Hindu god. As the god is incapable of managing his property he should be deemed a perpetual minor for the purpose of limitation."

We were not referred to any ruling where this opinion may have been followed. With respect, it may be pointed out that in a transfer by a minor the question of a proper or improper alienation would not arise. Under the Contract Act a transfer by a minor would be void and not only voidable : *Mohori Bibee* v. *Dharmodas Ghose* (1). If the rule were enforced the property of a god would not fetch any money in the market when need arose to transfer it for the benefit of the temple where the idol may be installed. The learned editor himself has quoted in the book a pronouncement of their Lordships of the Privy Council in conflict with this view, *Jagadindra Nath Roy* v. *Hemanta Kumari* (2). In that case a suit for possession was brought by a sebait of an idol and the High Court of Calcutta held that the idol being a juridical person, capable as such of holding property, limitation started running against him from the date

(1) (1902) I.L.R., 30 Calc., 539. (2) (1904) 31 I.A., 203.

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of the transfer and so the suit by the sebait was time-barred. Their Lordships accepted this view as probably the true legal view when the dedication is of the completest kind known to the law (page 209, paragraph 3). They, however, held that limitation was saved because when the cause of action arose the sebait, to whom the possession and management of the dedicated property belonged, was a minor. So the right to bring a suit for the protection of the property was at the time vested in a minor and such a suit could be brought within three years of the majority of the sebait in whom the right to sue had been vested. This is clear authority for holding that the idol was not considered by their Lordships to be a minor in perpetuity. In a later ruling this point is made more clear. That ruling is also quoted by the editor of Sastri's Hindu Law with great fairness: *Damodar* v. *Lakhan Das* (1). The senior chela and rightful mahant of a math transferred half the property of the math to another chela. When the senior chela was succeeded by his disciple, the latter brought a suit for recovery of possession against the chela to whom his predecessor had transferred half the property. The suit was brought 12 years after the transfer and was held by their Lordships to be time-barred. They observed: "The learned Judges of the High Court have rightly held that in point of law the property dealt with by the *ekrarnama* was prior to its date to be regarded as vested not in the mahant, but in the legal entity, the idol, the mahant being only his representative and manager. And it follows from this that the learned Judges were further right in holding that from the date of the *ekrarnama* the possession of the junior chela by virtue of the terms of that *ekrarnama* was adverse to the right of the idol and of the

(1) (1910) I.L.R., 37 Calc., 885.

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senior chela as representing that idol and that therefore the present suit was barred by limitation." (page 894). We have clear authority, therefore, in refusing to accept the plaintiff's argument.

[The judgement then proceeded to deal with the other two issues which are not material for the purpose of this report.]

For these reasons our answers to the questions put to us by the learned Additional Judge are :—

(1) That the transfer of the 17th of April, 1905, was an alienation which started adverse possession in favour of Musammat Bishni.

(2) That Musammat Bishni could acquire title to the property under the deed and by adverse possession.

(3) That by her admission of paragraphs 1 and 2 of the plaint Musammat Bishni was not estopped from putting forward a plea of limitation.

A copy of this judgement shall be sent to the court which made this submission and the costs consequent on the reference here shall be costs in the appeal out of which the reference arose. The costs will be payable by the plaintiff.

APPELLATE CIVIL.

1926 *January*, 4.

Before Sir Grimwood Mears, Knight, Chief Justice, and Mr. Justice Lindsay.

JAI NARAIN (DEFENDANT) *v.* JAFAR BEG AND ANOTHER (PLAINTIFFS).*

Acquiescence—Equitable doctrine of—Building on the land of another—Circumstances disentitling owner to claim demolition.

In order that the protection of the equitable doctrine of acquiescence may be successfully claimed, the following circumstances must subsist :—

The party claiming the benefit of the doctrine must have made a mistake as to his legal rights and must have

* Appeal No. 90 of 1924, under section 10 of the Letters Patent