

in order. That Act, however, has added a section that nothing in the Gambling Act shall apply to any game of mere skill *wherever played*. The result of this amendment appears to be as follows. The playing of a game of mere skill in a public place is gaming but it is not such gaming as falls within the ambit of the Public Gambling Act. The Magistrate's suggestion that the expression "any game of mere skill" means a game in respect of which there is no wagering or betting, is untenable. Accordingly the convictions of the six persons in this case are set aside and the fines, if paid, will be returned to them.

Convictions set aside.

APPELLATE CIVIL.

Before Mr. Justice Lindsay and Mr. Justice Kanhaiya Lal.

BACHIAN SINGH AND OTHERS (PLAINTIFFS) *v.* BIJAI SINGH AND OTHERS (DEFENDANTS).*

Pre-emption—Lis pendens—Application of the doctrine of lis pendens to a suit for pre-emption.

Two suits for pre-emption of the same property were filed by rival pre-emptors having equal claims, and on the date of the filing of the second the purchasers sold the property in suit to a person having an equal right of pre-emption with both sets of plaintiffs.

Held that, applying the doctrine of *lis pendens*, the second purchaser and the two sets of pre-emptors were *prima facie* entitled to divide the property amongst them; but, inasmuch as both suits had been dismissed by the first court and the second set of pre-emptors had not appealed, the property was divided proportionately between the second purchaser and the first set of pre-emptors. *Bhikhi Mal v. Debi Sahai* (1); followed. *Harkeshi v. Mewa Ram* (2), dis-sented from.

1925.

EMPEROR
O.
PANNA
LAL.

1925.
July, 24.

* Second Appeal No. 1612 of 1924, from a decree of Lakshmi Narain Tandan, Subordinate Judge of Farrukhabad, dated the 24th of September, 1924, reversing a decree of Banwari Lal Mathur, Munsif of Kaimganj, dated the 26th of May, 1924.

(1) (1925) I.L.R., 47 All., 923.

(2) (1923) 72 Indian Cases, 247.

1925.

CHARAN
SINGH
v.
BIJAI
SINGH.

THIS was a second appeal arising out of a suit for pre-emption. One Charan Singh sold certain property to Bijai Singh and Chandrabas. Bijai Singh was a co-sharer in the property sold, but Chandrabas was a stranger. Two suits for pre-emption were filed within about two weeks of each other, and on the date when the second suit was filed the defendants vendees sold the property in suit to one Pokhar Singh, who himself was a person entitled equally with the two sets of pre-emptors to pre-empt the property sold by Charan Singh. The court of first instance, finding that the two sets of plaintiffs and Pokhar Singh had all equal rights of pre-emption, made a decree dividing the property in suit proportionately amongst them. On appeal this decree was reversed and both suits dismissed with the result of leaving Pokhar Singh in possession of the whole. One set of pre-emptors appealed; the other did not.

Munshi *Gulzari Lal*, for the appellants.

Babu *Piari Lal Banerji*, for the respondents.

LINDSAY and KANHAIYA LAL, JJ.:—After hearing the arguments in this case we have come to the conclusion that the appeal must be allowed. It is quite true that the judgement of the lower appellate court is based upon a ruling of this Court reported in *Harkeshi v. Mewa Ram* (1). There can be no doubt that on the facts that case is not distinguishable from the case now before us, but nevertheless, for the reasons we are about to give, we think it should not be followed.

[After setting out the facts, the judgement then proceeded.]

In the case of *Harkeshi v. Mewa Ram* (1), upon which the lower appellate court relies, no question

(1) (1923) 72 Indian Cases, 247.

1925.

BAOHAN
SINGH
v.
BIFAR
SINGH.

was raised regarding the application of the doctrine of *lis pendens*. We think, however, that that doctrine must be applied to pre-emption suits as well as to any other suits. We have set this down in a ruling in *Bhikhi Mal v. Debi Sahai* (1). Now it is plain that in the present case the transfer which was made to Pokhar Singh was *pendente lite* and the plaintiffs appellants before us can say that the doctrine of *lis pendens* ought to be applied in the suit which they instituted, and that any rights that they had against Pokhar Singh at the institution of the suit should not be interfered with by anything done by the original vendees of the property pending the trial of the suit.

It has been said that the plaintiffs and Pokhar Singh have equal status in the matter of claiming pre-emption and it is clear that if Pokhar Singh instead of taking a transfer of the property had brought a rival suit for pre-emption, he would have been given a share of the property in proportion to the extent of his claim along with the other plaintiffs pre-emptors.

It appears to us, therefore, that on the application of this principle the decree of the court of first instance was correct in the circumstances as they then existed. We have, however, to take notice of the fact that one set of pre-emptors has dropped out and has allowed the decree of the lower appellate court to become final. We, have, therefore, now before us only one set of four pre-emptors and the purchaser, Pokhar Singh, and applying the principles laid down above, we think that the proper decree to pass is that the plaintiffs appellants be given four-fifths of the pre-empted property on payment of Rs. 320. Pokhar Singh, who has already purchased, may retain the remaining one-fifth of the property. We allow the plaintiffs two months to deposit the sum mentioned

1925.

BACHAN
SINGH
v.
BEJAI
SINGH.

above in the court of first instance to the credit of Pokhar Singh. If the deposit is made within the time limited, the plaintiffs' claim will be decreed to that extent and they will be entitled to four-fifths of their costs in both the courts below. If the deposit is not so made, then their suit will stand dismissed with costs to Pokhar Singh in both the courts below. As regards the costs of this Court we leave the parties to bear their own costs.

Appeal allowed.

REVISIONAL CIVIL.

Before Mr. Justice Kanhaiya Lal.

1925
July, 27.

BECHAN (DEFENDANT) v. RAGHUNATH AND OTHERS
(PLAINTIFFS)*

*Civil Procedure Code, section 152; order XX, rule 6 (1)—
Jurisdiction of trial court to amend a decree not in
accordance with the judgement—Appeal.*

The jurisdiction of the court which has passed a decree to amend it so as to bring it into accordance with the judgement does not cease upon the filing of an appeal, but continues until the appellate court has heard the appeal and decided it. *Asma Bibi v. Ahmad Husain* (1) distinguished.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

Pandit *Kashi Nurain Malawiya*, for the applicant.

KANHAIYA LAL, J.—This is an application in revision for the discharge of an order for the amendment of a decree passed by the trial court on

* Civil Revision No. Nil of 1925.

(1) (1908) I.L.R., 30 All., 290.