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Learned counsel for the appellants was forced in the end to admit that the one act of the plaintiffs which could be regarded as amounting to an assertion of an intention to appropriate the land by the plaintiffs was the construction of the aforementioned foundations. We are unable to agree with learned counsel that this fact in any way assists his clients. It may well be that when these foundations were constructed the plaintiffs had considered enclosing the land and thereby asserting a claim to it adverse to the title of the defendant or his predecessor. Whatever may have been their intention, it is clear that they never carried it out; it may be because the defendant or his predecessor objected. The fact is, however, that the walls were never constructed and the land was never enclosed. No act therefore was done by the plaintiffs which amounted to an unequivocal assertion of an intention to appropriate the land.

Upon the whole matter we are satisfied that the conclusion of the learned single Judge is sound.

The appeal is accordingly dismissed with costs.

Before Mr. Justice Bennet and Mr. Justice Verma

SRI THAKURJI MAHARAJ AND ANOTHER (DEFENDANTS) v.
SUJAN SINGH AND OTHERS (PLAINTIFFS)*

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November, 3

Limitation Act (IX of 1908), articles 10, 120, 144—Pre-emption—Suit for pre-emption against original vendee—Assignment by vendee before suit—Vendee's assignee impleaded as defendant more than one year after the assignment—Limitation as against the assignee—Cause of action, not affected by the assignment.

A suit of pre-empt a sale of the 13th of July, 1932, was brought on the 12th of July, 1933. The vendee, however, had assigned the property on the 22nd of October, 1932, and an application by the plaintiff to implead the assignee as a defendant was granted on the 20th of December, 1933, and the assignee was

*Second Appeal No. 606 of 1935, from a decree of Niraj Nath Mukerji, Additional Civil Judge of Bareilly, dated the 9th of October, 1934, confirming a decree of Jamil Ahmad, Munsif of Hawali, dated the 22nd of February, 1934.

added as a defendant: *Held*, that the suit as against the assignee was not barred by limitation.

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If the purchaser under a sale deed, in respect of which the cause of action for the suit for pre-emption has arisen, has subsequently transferred the property to another, the original cause of action for pre-emption is not thereby affected. The subsequent transferee from the original vendee must take the transfer subject to the plaintiff's right to pre-empt.

A suit in these circumstances is not barred by time as against the subsequent transferee. The suit, as against the subsequent transferee, may be regarded as one for declaration, and so governed by article 120 of the Limitation Act, or as one for possession against a person who is in possession without title, and so governed by article 144.

Mr. G. S. Pathak, for the appellants.

Mr. Ram Narain Verma, for the respondents.

BENNET and VERMA, JJ.:—This is an appeal by the defendant No. 5 as well as the defendant No. 4 and arises out of a suit for pre-emption which has been decreed by both the courts below. The only point involved in the appeal is one of limitation.

On the 13th of July, 1932, a sale deed was executed by the defendants Nos. 1 to 3 in respect of certain property in favour of Hira Lal, the defendant No. 4 and appellant No. 2. The suit for pre-emption, which has given rise to this appeal, was filed by the plaintiffs respondents on the 12th of July, 1933, impleading Hira Lal alone, claiming that they had a preferential right of purchase as against Hira Lal, and praying for a decree for possession by right of pre-emption in respect of the sale deed of the 13th of July, 1932. In his written statement Hira Lal alleged that he was no longer in possession of the property in question as he had by a deed of wakf dated the 22nd of October, 1932, transferred his entire property, including the property which he had purchased under the sale deed in question, to Sri Thakurji Maharaj. Thereupon the plaintiffs applied that Sri Thakurji Maharaj be impleaded as a

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defendant in the suit and asked for consequential amendments of the plaint. This application was granted on the 20th of December, 1933, and Sri Thakurji Maharaj was added as the defendant No. 5. A written statement was filed on behalf of Sri Thakurji Maharaj and one of the pleas taken in it was that "the plaintiffs' claim as against the contesting defendant is barred by one year's limitation." This plea was explained in the course of arguments before the trial court to mean that the period of one year was to be taken from the date of the transfer in favour of the idol, namely the 22nd of October, 1932, when the deed of wakf was executed. Both the courts below have repelled this contention. The same argument has been advanced before us as was urged before the courts below and it is argued that the suit as against the idol must be held to be time barred. The article of the Limitation Act which has to be considered is article 10. It runs thus: "To enforce a right of pre-emption . . . one year. . . when the purchaser takes under the sale sought to be impeached physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered." The deed of sale which the plaintiffs sought to impeach by this suit was, as mentioned above, executed on the 13th of July, 1932. The suit was filed within one year from that date. The suit was to enforce a right of pre-emption in respect of that sale deed. The cause of action for that suit arose either on the registration of that sale deed, or when the purchaser took physical possession of the property, and that cause of action was based on the fact that property had been sold to a person as against whom the plaintiffs had a preferential right of purchase. If a purchaser under a sale deed in respect of which the cause of action for the suit for pre-emption has arisen has subsequently transferred the property to another, the original cause of action for pre-emption is not thereby

affected. The subsequent transferee from the original vendee must take the transfer subject to the plaintiffs' right to pre-empt. It has been so held by a Full Bench of the Punjab Chief Court in the case of *Karam Dad v. Ali Muhammad* (1). The court of the Judicial Commissioner of Oudh has also accepted that view in *Razawand Singh v. Dukchhor* (2). We agree with the view expressed in these cases that a suit in these circumstances is not barred by time as against the subsequent transferee. The suit as against the subsequent transferee may be regarded as one for declaration, and so governed by article 120, or as one for possession against a person who is in possession without title, and so governed by the 12 years' rule of limitation. In either case the suit giving rise to this appeal was well within time. Reference may also be made to the decision of a Bench of this Court in the case of *Sat Narain v. Badri Nath* (3). We do not think that the fact that the sale deed in favour of the subsequent transferee in that case was registered a few days after the expiry of the period of one year from the date of the first sale deed affords any valid ground for distinguishing that case. It is admitted by the learned counsel for the appellants that he has no authority to support his contention.

For the reasons given above we dismiss this appeal with costs.

(1) (1913) 18 Indian Cases, 70.

(2) (1914) 24 Indian Cases, 116.

(3) (1912) 9 A.L.J. 211.