

Before Sir John Thom, Chief Justice, Mr. Justice Allsop and
Mr. Justice Ganga Nath

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MUHAMMAD ZAMAN KHAN (PLAINTIFF) v. BAHADUR
SINGH AND ANOTHER (DEFENDANTS)*

*Agra Pre-emption Act (Local Act XI of 1922), section 7—
Bundelkhand Alienation of Land Act (Local Act II of
1903), sections 3, 16A—Pre-emption of sale of Bundelkhand
land—Pre-emptor not a member of an agricultural tribe—
Sanction of Collector to institute a suit for pre-emption—
Effect of sanction—Such person is not one who is “not
entitled to purchase the property”—Cause of action.*

A person who is not a member of an agricultural tribe can maintain a suit for pre-emption of a sale of land in Bundelkhand if he has obtained the sanction of the Collector to institute such suit.

Under section 3 of the Bundelkhand Alienation of Land Act a person who is not a member of an agricultural tribe is not prohibited from purchasing land in Bundelkhand. It is true that his right to purchase is subject to the condition that the purchase must have the sanction, either antecedent or subsequent, of the Collector, but the transaction is perfectly validated by the sanction. He is not, therefore, a person who is “not entitled to purchase the property”, within the meaning of section 7 of the Agra Pre-emption Act.

According to sections 3 and 16A of the Bundelkhand Alienation of Land Act the position in regard to the purchase of Bundelkhand land is as follows. Members of an agricultural tribe may purchase or pre-empt Bundelkhand land without the sanction of the Collector. Non-agriculturists may purchase or pre-empt Bundelkhand land provided they have obtained the sanction of the Collector to purchase or the sanction of the Collector to bring a suit to enforce a right of pre-emption.

The intention of the legislature in enacting section 7 of the Agra Pre-emption Act was to preserve the position so far as pre-emption is concerned under the Bundelkhand Alienation of Land Act. The intention, in other words, was to ensure that so far as Bundelkhand land is concerned non-agriculturists should be permitted to pre-empt only if they had obtained the sanction of the Collector to institute a suit for pre-emption.

The right of pre-emption is something far wider than the right of purchase. If the Collector grants to a non-agriculturist permission to institute a suit for pre-emption, it must be

*Appeal No. 40 of 1939, under section 10 of the Letters Patent.

taken that he has no objection to that person as a purchaser ; by implication, therefore, he grants his sanction to purchase.

Such a person, to whom the Collector has granted sanction for instituting a suit for pre-emption, certainly has a cause of action on the date of the institution of the suit.

Phul Chand v. Ram Nath (1), overruled.

Mr. B. S. Darbari, for the appellant.

Dr. N. P. Asthana, for the respondents.

THOM, C.J., ALLSOP and GANGA NATH, JJ.:—This is a plaintiff's appeal arising out of a suit for pre-emption.

The suit was one for pre-emption of Bundelkhand land. It was defended by both the vendor and the vendee. The trial court granted a decree for pre-emption. The learned Civil Judge in the lower appellate court, however, recalled the decree of the Munsif and dismissed the suit. His decision has been upheld by this Court in second appeal.

The facts of the case are not in dispute. The plaintiff is a co-sharer in the mahal in which the property in dispute is situated. The property is Bundelkhand land and the vendee is a stranger to the mahal.

Apart from the special provisions in the Agra Pre-emption Act and the Bundelkhand Alienation of Land Act the plaintiff is entitled according to local custom to pre-empt. His suit has been dismissed, however, upon the ground that his right to pre-empt is destroyed by the provisions of section 7 of the Pre-emption Act. Section 7 is in the following terms: "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."

Now under section 3 of the Bundelkhand Alienation of Land Act the plaintiff being a non-agriculturist must obtain sanction of the Collector to purchase the land in dispute. The relevant portion of section 3 is as follows: "3. (1) A person who desires to make a permanent alienation of his land shall be at liberty to make such alienation where—(a) the alienor is not a member of an agricultural tribe; or (b) the alienee is either a member of the same agricultural tribe as the alienor, or is a

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member of an agricultural tribe and a resident of the district in which the land is situated. (2) Except in the cases provided for in sub-section (1), a permanent alienation of land shall not take effect as such unless and until sanction is given thereto by the Collector of the district in which the land is situated: Provided that sanction may be given after the act of alienation is otherwise completed."

It will be observed that under this section certain persons are entitled to purchase Bundelkhand land without any restriction. Other persons, viz., non-agriculturists, must obtain the sanction of the Collector before any purchase of Bundelkhand land can be effective. The section does not prohibit the purchase of Bundelkhand land by a non-agriculturist. On the contrary the section specifically provides that a purchase of Bundelkhand land without the sanction of the Collector may be subsequently validated by the sanction of the Collector.

The learned single Judge who disposed of the second appeal held that the sanction given to the appellant to purchase the property in dispute and to bring a suit for pre-emption was valueless. In the course of his judgment he observed: "Once the vendor had sold the property to the vendee no sanction could be given by the Collector for the sale of the property by the vendor to the vendee. The sanction contemplated by section 3 of the Bundelkhand Alienation of Land Act must have reference to those cases and to those cases alone in which a co-sharer has agreed to transfer his property to the person obtaining the sanction and a Collector obviously cannot sanction the sale of property to a specified person when that property has already been sold by the vendor to another person. The sanction to purchase given to the plaintiff by the Collector in the present case was, therefore, meaningless and could not entitle the plaintiff to exercise the right of pre-emption."

We would observe, in the first instance, that the plaintiff is not a person who under the Bundelkhand Alienation of Land Act is not entitled to purchase the property in dispute. The plaintiff is entitled to purchase

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the property. If he succeeds in persuading the vendor or the vendee to transfer by way of sale the property to him, that transaction would be perfectly legal. Even if he had not obtained the sanction of the Collector to purchase, the transaction could be subsequently validated by the sanction of the Collector. The plaintiff, therefore, in our judgment is a person who is entitled to purchase Bundelkhand land. It is true that his right to purchase is subject to the condition that the purchase must have the sanction either antecedent or subsequent of the Collector. He nevertheless is not prohibited from purchasing. What then was the intention of the legislature in enacting section 7 of the Agra Pre-emption Act?

It is true that this section refers to persons who are not entitled to purchase under the Bundelkhand Alienation of Land Act. As the Bundelkhand Alienation of Land Act does not enact that certain persons are not to be entitled to purchase property, section 7 of the Agra Pre-emption Act would appear to be somewhat ambiguous. The intention of the legislature, however, in our judgment, is to be discovered by a reference to the provisions of section 16A of the Bundelkhand Alienation of Land Act. Section 16A enjoins: “(1) Without the previous sanction of the Collector no person shall institute a suit or take any other proceeding in any court to enforce a right of pre-emption in respect of any land unless—(a) the transferor is not a member of an agricultural tribe; or (b) the person instituting the suit or taking the proceeding is either a member of the same agricultural tribe as the transferor or is a member of an agricultural tribe and a resident of the district in which the land is situated.” The intention of the legislature so far as this later section is concerned was to preserve the right of pre-emption to those persons who are not members of an agricultural tribe but who nevertheless would have been entitled to purchase property with the sanction of the Collector under section 3 of the Act.

Under the provisions of the Bundelkhand Alienation of Land Act, therefore, the position in regard to the

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purchase of Bundelkhand land is as follows. Members of an agricultural tribe may purchase and pre-empt Bundelkhand land without the sanction of the Collector. Non-agriculturists may purchase and pre-empt Bundelkhand land provided they have obtained the sanction of the Collector to purchase or the sanction of the Collector to bring a suit or proceeding to enforce a right of pre-emption. The intention, therefore, of the legislature in enacting section 7 of the Agra Pre-emption Act was, in our judgment, to preserve the position so far as pre-emption is concerned under the Bundelkhand Alienation of Land Act. Had section 7 not been enacted, it might have been contended that non-agriculturists in view of the other provisions of the Agra Pre-emption Act could have instituted a suit for pre-emption despite the provisions of section 16A of the Bundelkhand Alienation of Land Act.

Learned counsel for the respondent relied in support of the decree in his favour on the decision in the case of *Phul Chand v. Ram Nath* (1). In that case a Bench of this Court held that section 7 of the Pre-emption Act had the effect of depriving a non-agriculturist of any right of pre-emption which he may have had under the provisions of the Bundelkhand Alienation of Land Act. In the course of his judgment in that case SULAIMAN, J., observed: "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." With respect we are unable to agree with this statement of the law.

Section 16A of the Bundelkhand Alienation of Land Act recognizes a very valuable right in a non-agricul-

turist, namely the right, provided the sanction of the Collector is obtained, to institute a suit for pre-emption. If the intention of the legislature had been to destroy that right, then, in our view, it would have done so in a more specific and in a less ambiguous way than by section 7 of the Agra Pre-emption Act. The legislature is not to be presumed to intend to deprive citizens of valuable rights where it has not done so specifically. If the legislature had intended to deprive non-agriculturists of their right to pre-empt Bundelkhand land, nothing would have been easier than to have enacted simply that so far as Bundelkhand land was concerned non-agriculturists were to have no right to pre-empt. Furthermore, we are reluctant to accept an interpretation of a provision which would impose a duty upon the Collector which, in the words of SULAIMAN, J., in the case referred to above, would be "futile".

We do not consider it necessary to pursue the question as to whether the right of pre-emption is something entirely different from the right of purchase. In our judgment, however, the right of pre-emption is something far wider than the right of purchase. If the Collector grants to a non-agriculturist permission to institute a suit for pre-emption, it must be taken that he has no objection to that person as a purchaser. By implication, therefore, he grants his sanction to purchase. The Collector would not grant sanction to institute a suit for pre-emption to a person to whom he would refuse sanction to purchase.

The real question for consideration in this appeal is as to whether the plaintiff can be regarded as a person who is not entitled to purchase the property in dispute. As we have already observed, there is nothing in the Bundelkhand Alienation of Land Act which deprives him of a right to purchase. Under the provisions of that Act he is perfectly free, for example, at a public auction held by the vendor, to appear and bid for the land which the vendor desires to sell. He, in other words, is entitled to purchase. It is true that before

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his purchase can become effective as a purchase he must obtain the sanction of the Collector to the transaction. The intention of the legislature in section 7, in other words, was to ensure that so far as Bundelkhand land is concerned non-agriculturists should be permitted to pre-empt only if they had obtained the sanction of the Collector to institute a suit for pre-emption.

It was contended that the plaintiff's suit must fail because on the date of the sale there was no cause of action. This argument, in our judgment, is unsound. The land which the plaintiff was according to local custom entitled to pre-empt had been sold; he was not prohibited from purchasing the land, and he had obtained the Collector's permission to institute a suit for pre-emption and—although this was not necessary—separate sanction to purchase. In these circumstances he had a cause of action on the date of institution of the suit.

Upon the whole matter we are satisfied that the right of a non-agriculturist to institute proceedings for the pre-emption of Bundelkhand land is preserved by the provisions of the Agra Pre-emption Act.

As a result the appeal is allowed. The orders of this Court and that of the lower appellate court are set aside and the case is remanded to the lower appellate court for disposal according to law. The plaintiff is entitled to his costs in appeal in this Court. The court-fee will be refunded.

*Before Sir John Thom, Chief Justice, Mr. Justice Allsop and
Mr. Justice Ganga Nath*

SULTAN AHMAD KHAN (PLAINTIFF) v. JALALUDDIN AND
ANOTHER (DEFENDANTS)*

Agra Tenancy Act. (Local Act III of 1926), section 44—Lambardar's suit for ejectment of co-sharer—Such suit does not come under the section—Lambardar not "landholder" of co-sharer—Co-sharer not a "trespasser".

A lambardar is not entitled to eject a co-sharer from a particular plot by a suit under section 44 of the Agra Tenancy

*Second Appeal No. 1406 of 1937, from a decree of I. B. Mundle, District Judge of Bareilly, dated the 12th of March, 1937, reversing a decree of D. Vira, Assistant Collector, first class of Bareilly, dated the 28th of April, 1936.

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