

pre-emption suits is that it runs from the date of notice. If physical possession is given under the sale the whole world is given notice of the alienation. If a registered deed is executed, constructive notice is given and in the same way constructive notice is given by mutation. In *Mul Chand v. Mansa Ram* (1) the conditions of the contract were different for full title passed at the time of execution of the deed. Here the title did not pass until the conditions had been fulfilled. The finding of the District Judge that physical possession under the sale passed automatically and without any outward and visible signs to inform the world of the fact at the time that the title ripened into full ownership is directly opposed to his own earlier finding and to the admissions of the parties.

We find, therefore, that the suit is within time under section 29. We therefore accept the appeal and reverse the decree and under Order XLI, rule 23 we pass an order of remand, directing the District Judge to give a decision on the merits. The stamp will be returned and the costs of this hearing will be costs in the suit.

A. N. C. *Appeal accepted—Case remanded.*

APPELLATE CIVIL.

Before Mr. Justice Scott-Smith.

HAZARA SINGH (PLAINTIFF)—*Appellant,*

versus

BUBE KHAN AND OTHERS (DEFENDANTS) —
Respondents.

Civil Appeal No. 2168 of 1921.

Lis pendens—suit by a reversioner of the vendor for the usual declaration during pendency of a pre-emption suit—effect of decree in the declaratory suit on the pre-emption suit.

One B. K. sold land to N. S. and S. S. on the 7th May 1919. The plaintiff, H. S., brought a suit for pre-emption on the 7th May 1920. On the 8th June 1920, T. M., the son of the vendor, brought a suit against the vendees and his father for a declaration that the sale, being without consideration and

(1) 157 P. B. 1838.

necessity, should not affect his reversionary rights on the death of the vendor. The parties to that suit entered into a compromise, whereby it was agreed that after the death of B. K., T. M. would be entitled to take possession of the land from the vendees on payment of Rs. 900. The Court below held that as T. M. had a better right of pre-emption than H. S. and as, upon a declaratory suit brought by him, the sale had been converted into a mortgage, H. S. had lost his right of pre-emption, as no sale remained which he could pre-empt.

Held, that having regard to the rule of *lis pendens* the plaintiff's right to pre-empt the sale could not be affected by the terms of the compromise entered into between T. M. and the vendees. The rule of *lis pendens* is that the litigating party is exempted from taking notice of a title acquired during the litigation.

Harnam Singh v. Jiwan (1), followed.

Tafazzul Husain v. Than Singh (2), *Sanwal Das v. Gur Parshad* (3), *Megha Ram v. Makhan Lal* (4), distinguished.

Held also, that it was incorrect to say that the sale had been converted into a mortgage. The sale still subsists *qua* the vendor, but his son, T. M., after his death can recover the land if he pays Rs. 900 to the vendees.

Second appeal from the decree of Lt.-Col. J. Friezelle, District Judge, Jullundur, dated the 9th May 1921, affirming that of Lala Radha Kishen, Munsif, 1st Class, Jullundur, dated the 7th February 1921, dismissing the claim.

ABDUL GHANI, for Appellant.

DAULAT RAM, for Respondents.

SCOTT-SMITH J.—This is a second appeal by plaintiff in a pre-emption suit. Both the Courts below have concurred in dismissing the suit. The land was sold by Bube Khan on 7th May 1919 to Narain Singh and Sewa Singh. The price entered in the deed of sale is shown as Rs. 1,000. The plaintiff Hazara Singh, on the 7th May 1920, asked for a decree, for pre-emption, on payment of Rs. 800. On 8th June 1920, Taj Muhammad, son of the vendor, brought a suit both against his father and the vendees for a declaration that the sale, being without consideration and necessity, should not affect his reversionary rights on the death of the vendor. The parties to that suit entered into a compromise whereby it was agreed that the land would remain in the possession of the

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(1) 7 P. R. 1908, p. 19.
(2) (1910) I. L. R. 32 All. 567.

(3) 80 P. R. 1909 (P. R.).
(4) 67 P. R. 1912.

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vendees, and that after the death of Bube Khan, Taj Muhammad could take possession on payment of Rs. 900. The Courts below have held that as Taj Muhammad had a better right of pre-emption than Hazara Singh and as, upon a declaratory suit brought by him, the sale had been converted into a mortgage, plaintiff had lost his right of pre-emption, as no sale remained which he could pre-empt.

It is urged before me by counsel for the appellant that plaintiff could not lose his right by any arrangement entered into whilst his suit was pending between parties to a later suit to which he was no party; in other words, that the doctrine of *lis pendens* applied. *Lala Daulat Ram*, on behalf of the respondents, cites *Sanwal Das v. Gur Parshad* (1), *Megha Ram v. Makhan Lal* (2), and *Tafazzul Husain v. Than Singh* (3), as authorities for the proposition that a would-be pre-emptor cannot succeed unless he has a subsisting right of pre-emption not only on the date of institution of the suit but also on the date of the decree. He urges that as the sale was set aside upon the suit of Taj Muhammad whilst plaintiff's suit was pending, there was no sale which plaintiff could pre-empt on the date of the decree. In the case reported as *Tafazzul Husain v. Than Singh* (3) the plaintiff sued for pre-emption of a sale of *zamindari* property basing his claim upon the fact that he was a co-sharer in the property sold. After the suit, but before decree, the property was partitioned and plaintiff and the vendors became owners of different *mahals*. It was held that the plaintiff was no longer, after the partition had been completed, entitled to a decree for pre-emption. I have no quarrel with that decision. It is clear that in that case the plaintiff was no longer a co-sharer at the time of the decree and, therefore, had no right to pre-empt. The other rulings referred to do not help the respondents, *Harnam Singh v. Jiwan* (4) was a case where during the pendency of a pre-emption suit the original vendee allowed a consent pre-emption decree to be passed against him in favour of a person who had notice of the original suit and wished the sale to the original vendee to be maintained, it was held that this transaction must

(1) 90 P. R. 1909 (F.R.).
(2) 87 P. R. 1912.

(3) (1910) I. L. R. 32 ALL. 567.
(4) 7 P. R. 1906.

be deemed to be a sale reduced into the form of a decree and subject to the law of *lis pendens* and therefore ineffectual against the original pre-emptor. At page 19 of the report it is said that the principle underlying the rule of *lis pendens* is that the litigating party is exempted from taking notice of a title acquired during the litigation. In the present instance the title of the vendees was impaired by the terms entered into between them and Taj Muhammad, and in my opinion, the plaintiff, having regard to the rule of *lis pendens*, cannot be affected thereby. It is also, in my opinion, incorrect to say that the sale has been converted into a mortgage. The sale still subsists *qua* the vendor, but his son, Taj Muhammad, after his death, can recover the land, if he pays Rs. 900 to the vendees. I therefore accept the appeal and, setting aside the order of the lower Appellate Court, remand the case for decision, in accordance with law, to the Court of first instance. Stamp of this Court and of the lower Appellate Court will be refunded and other costs will be costs in the cause.

M. R. *Appeal accepted—Case remanded.*

[APPELLATE CIVIL.

Before Mr. Justice Abdul Raoof and Mr. Justice Campbell.

MOHINDAR SINGH (PLAINIFF)—*Appellant,*

versus

ARUR, SINGH AND OTHERS (DEFENDANTS)—
Respondents.

[Civil Appeal No. 3031 of 1918.

Punjab Pre-emption Act, I of 1913, section 8 (2)—Government Notification declaring that no right of pre-emption shall exist in a certain area—effect of, on pending suit.

On 10th October 1917 plaintiff brought 2 suits for pre-emption in respect of 2 plots of land in the estate of Amritsar sold by the same vendor to 2 separate vendees on the 11th October 1916. On 6th May 1918, during the pendency of the suits, the Punjab Government declared by Notification under section 8 (2) of the Punjab Pre-emption Act that from the date of the Notification "no right of pre-emption shall exist" within a certain area, in which the plots in suit are admittedly con-

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