

APPELLATE CIVIL.

Before Mr. Justice Abdul Raouf and Mr. Justice Harrison.

TOLA RAM (PLAINTIFF)—*Appellant*,

versus

LORINDA RAM AND OTHERS (DEFENDANTS)—
Respondents.

1922

Jan. 27

Civil Appeal No. 410 of 1917.

Punjab Pre-emption Act, II of 1905, section 29—Limitation—starting point—in suit or pre-emption in respect of an adhlapinama—Indian Limitation Act, IX of 1908, articles 10 and 120.

On 20th March 1907, P. D. entered into an *adhlapinama* contract in regard to a holding in the Multan District, under the terms of which he was to get possession at once and was to sink a well, erect certain buildings and pay the sum of Rs. 300 and on the fulfilment of these conditions, and not before, one-half of the holding was to become his. On 4th March 1908 the present plaintiff brought a suit for pre-emption which was dismissed on the ground that the transaction was not a sale, but a mere agreement to sell. P. D. remained in possession and on 14th September 1911 one-half of the land was entered in the name of his son, it being recited that the conditions had been fulfilled and he had become owner of one-half of the holding. On 13th January 1912, the plaintiff instituted the present suit for pre-emption on the strength of the mutation of 14th September 1911.

Held, that as under the circumstances of the case physical possession under the sale was impossible, because the vendee (*adhlapidar*) was in physical possession from the date of the execution of the original contract, time began to run, under the provisions of section 29 of the Punjab Pre-emption Act, from the date of mutation and the suit was consequently within time.

The underlying principle governing the limitation in 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.

Batul Begam v. Mansur Ali Khan (1), referred to.

Mul Chand v. Mansa Ram (2), distinguished.

Second appeal from the decree of Khan Sahib Sheikh Amir Ali, District Judge, Multan, dated the 1st November 1916, reversing that of Lala Munna Lal,

(1) (1901) I. L. B. 24 ALL. 17 (P. C.)

(2) 157 P. R. 1889.

1922

Junior Subordinate Judge, 2nd Class, Multan, dated the 4th February 1916, and dismissing the claim.

TOLA RAM
v.
LORINDA RAM.

DHARM DAS SURI, for Appellant.

SHUJA-UD-DIN, for Respondents.

The judgment of the Court was delivered by—

HARRISON J.—The facts of this case are that Thakar Das and Notan Das executed a deed on a form known as an *Adhlapinama* in favour of Parshotam Das on the 20th March 1907 with regard to a holding in the Multan district. The terms of this deed were that possession was transferred at once, Parshotam Das was to sink a well and be provided with certain materials for the purpose. He also had to erect certain other buildings and to pay the sum of Rs. 300, and on the fulfilment of these conditions, and not before, one half of the land was to become his. The important point is that possession was given to him at once. On the 4th of March 1908 the present plaintiff brought a suit for pre-emption against the parties to the deed. This was dismissed both in the original Court and in the Court of appeal; Thakar Das the owner made a statement to the effect that he had cancelled the *Adhlapinama* as the conditions had not been fulfilled by the other side. The Divisional Judge found that the transaction was not a sale but merely an agreement to sell. The *Adhlapidar* remained in possession, and on the 14th September 1911 (Thakar Das having died in 1909), one-half of the land was entered in the name of his son, it being recited that the conditions having been fulfilled the title had matured and he had become owner of one half of the holding. The present suit was instituted on the strength of this mutation on the 1st January 1912, the plaintiff alleging that there had been an oral sale. A decree for pre-emption was given by the trial court, but on appeal the suit was dismissed as not having been brought within time. The only question before us in second appeal is whether the suit is within time or not. Counsel for the respondents urges that the plaintiff having come into Court relying on an oral sale and having wholly failed to establish his contention he should not be allowed to fall back upon the original contract, and, if so allowed, that his limitation runs

from the date of physical possession under the sale which was given at latest at the time of Thakar Das' death in 1909.

1922

TOLA RAM

v.

LORINDA RAM.

Taking the findings of fact of the learned District Judge, it is established that the vendee " was in personal immediate and tangible possession of the land from the start." In spite of this finding and in spite of his having apparently appreciated the significance of *Batul Begam v. Mansur Ali Khan* (1), the District Judge has found that physical possession under the sale was given at the time that the title ripened into full ownership. He has overlooked the fact that under the circumstances of the case physical possession under the sale was impossible in the nature of things, and has treated the alteration in the legal status of the plaintiff as tantamount to the post-dating of an event, which, on his own finding, had occurred years before. The Pre-emption Act provides that where physical possession is given under a sale limitation runs from that date unless it has been preceded by a mutation. Where no physical possession is given limitation runs from the date of mutation or, under article 10 of the Limitation Act, from the date of registration of the sale-deed. Here no physical possession was given under the sale, for the vendee, as clearly held by the learned District Judge, was in physical possession from the date of the execution of the original contract. There was no registration of a sale-deed, as the instrument was an agreement to sell and not a sale. Had there been no mutation the limitation would apparently be governed by article 120, but as there was mutation, the case is governed by section 29 of the old Act which corresponds with section 30 of the present Act, and runs from the date of that mutation. It is true that the plaintiff has relied on an oral sale, but he was forced into this position by the conduct of Thakar Das, the original owner. He knew that the physical possession of the land had been transferred. He was informed that the contract under which the transfer had taken place had been cancelled, he was given notice of the existence of the title of the defendant as a full owner by the mutation, and he could only presume there had been an oral sale subsequent to the cancellation of the original contract. The underlying principle governing the limitation in

(1) (1911) I. L. R. 24 All. 17 (P. C.)

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.