

costs in this Court. The order of the trial Court regarding costs in that Court will stand.

TEK CHAND J.—I agree.

A. N. K.

Appeal accepted in part.

1937

YEATS

v.

DICKINSON

TEK CHAND J.

APPELLATE CIVIL.

Before Coldstream and Din Mohammad JJ.

JALLU AND OTHERS (DEFENDANTS) Appellants,

versus

SHAHU (PLAINTIFF)

MIRZA AND OTHERS (DEFENDANTS) } Respondents.

Regular Second Appeal No. 65 of 1937.

Punjab Pre-emption Act (I of 1913) S. 4: Pre-emptor having preferential right over the vendee — Vendee removing defect pendente lite — whether affects pre-emptor's suit — Re-sale — whether second vendee can defeat suit by removing defect in his status pendente lite.

Three of the proprietors of *patti mutfarrag* of a village sold some land to three other proprietors of the same *patti*, and two proprietors of a different *patti*. The plaintiff, a proprietor in *patti mutfarrag*, sued the vendees for pre-emption on the ground that as two of the vendees were not proprietors in *patti mutfarrag* he had a preferential right of pre-emption. During the pendency of the suit, but more than a year after the sale, the two vendees, who were not proprietors in *patti mutfarrag*, transferred their rights under the sale to the other vendees who were proprietors in the *patti*.

Held, that if a vendee, the sale to whom is otherwise open to attack, is able to defeat the pre-emptor's title by removing the defect *pendente lite* and clothing himself with a *status* equal to that of the pre-emptor at any time before the decision of the pre-emptor's suit, the pre-emptor has no preferential right at the time of the passing of the decree and his suit must fail.

Hayat Bakhsh v. Mansabdar Khan (1), followed.

Jas Raj v. Gokal Chand (2), distinguished.

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Held also, that in the case of a re-sale, the re-sale in order to avoid the application of the doctrine of *lis pendens*, must take place before the institution of the suit. But the doctrine does not apply where the vendee, during the pendency of the suit, improves his *status* by acquiring a *status* which would defeat the pre-emptor. In the latter case, the pre-emptor's suit must fail, if the vendee improves his *status* before the adjudication of the pre-emptor's suit.

Hans Nath v. Ragho Prasad Singh (1), followed.

Regular second appeal from the decree of Mr. M. R. Kayani, District Judge, Gujranwala, dated 30th October, 1936, reversing that of K. S. Sheikh Abdul Aziz, Senior Subordinate Judge, Gujrat, dated 11th June, 1936, and awarding the plaintiff possession by pre-emption of the land in dispute, etc.

ALLAH DIN, for Appellants.

FAQIR ULLAH, for (Plaintiff) Respondent.

The judgment of the Court was delivered by—

COLDSTREAM J.—On the 26th February, 1935, Ram Das, Abnashi Ram and Ram Piara sold 20 *kanals* and 15 *marlas* of land in *patti Mutfarrag* of *mauza* Mona in Gujrat District to Jallu, Fazla and Gaman, proprietors in that *patti* and Mirza and Hata, proprietors in another *patti* of the village. Shahu, who was a proprietor in *patti Mutfarrag*, sued on the 24th of February, 1936, to pre-empt this sale on the ground that Mirza and Hata were not proprietors in *patti Mutfarrag*. During the suit Mirza and Hata transferred their rights under the sale to Jallu, Fazla and Gaman. The trial Court, relying on *Hayat Bakhsh v. Mansabdar Khan* (2), dismissed the suit holding that for a pre-emptor to succeed in a suit his superior right must subsist until the time when the suit is decided. Shahu appealed to the District Judge

(1) I. L. R. (1932) 54 All. 189 (P. C.). (2) I. L. R. (1935) 16 Lah. 921.

who accepted the appeal and granted Shahu a decree. finding support in the remarks made at the end of the judgment in *Jas Raj v. Gokal Chand* (1), for his view that the sale by Mirza and Hata could not affect the pre-emptor's rights because it had not been effected within the period of limitation, namely, one year from the date of the sale which Shahu sought to pre-empt.

Against this decision the vendees have appealed and it is contended on their behalf that the learned District Judge has not appreciated the distinction between the present case, to which the decision of *Hayat Bakhsh v. Mansabdar Khan* (2) is clearly applicable, and the facts of the actual case decided in *Jas Raj v. Gokal Chand* (1).

There is force in this appeal.

In the case decided in *Hayat Bakhsh v. Mansabdar Khan* (2), the vendees had removed the defect in their status before the suit was decided, which is what the vendees have done in the present case. It was held that if a vendee, the sale to whom is otherwise open to attack, is able to defeat the pre-emptor's title by removing the defect *pendente lite* and clothing himself with a status equal to that of the pre-emptor's at any time before the decision of the pre-emptor's suit, the pre-emptor has no preferential right at the time of the passing of the decree and his suit cannot succeed. The case in *Jas Raj v. Gokal Chand* (1) was not one of this kind, but my learned brother Din Mohammad, in disposing of an argument advanced, but not pressed, before the Bench, remarked that a vendee in order to defeat a pre-emptor by re-sale to a person of superior status to that of the pre-emptor must effect that sale before limitation expired. That *obiter* remark has

(1) (1935) A. I. R. (Lah.) 808. (2) I. L. R. (1935) 16 Lah. 921.

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no application to the present case. The distinction between the two cases has been discussed by their Lordships of the Privy Council in *Hans Nath v. Ragho Prasad Singh* (1) where they decided that while in the case of a re-sale, the re-sale, in order to avoid the application of the doctrine of *lis pendens* must take place before the institution of the suit, the doctrine does not apply where the vendee, during the pendency of the suit, improves his status by acquiring a status which would defeat the pre-emptor and that if the vendee acquires such status before the adjudication of the pre-emptor's claim the pre-emptor's suit must fail.

This decision of their Lordships of the Privy Council concludes the matter before us. The appeal is accepted and the suit dismissed with costs throughout.

A. N. K.

Appeal accepted.

(1) I. L. R. (1932) 54 All. 189 (P. C.).