

period of limitation for an application for leave to appeal the time requisite for obtaining a copy of the judgment can be excluded. In the present case there is nothing on the record to show that the applicant had ever made an application for obtaining a copy of the decree and this being so, the applicant was entitled to exclude only the day on which the judgment complained of was pronounced and no other period. In other words, he was bound to submit his application on the 91st day. This application, however, was presented on the 98th day and it is, therefore, clearly time-barred.

On the grounds stated above we dismiss this application with costs.

A. N. K.

Application dismissed.

APPELLATE CIVIL.

Before Addison and Ram Lall JJ.

RAJA SINGH (PLAINTIFF) Appellant,

versus

KHAZAN SINGH, VENDEE, } (DEFENDANTS)
 SUJAN SINGH, VENDOR, } Respondents.

Regular Second Appeal No. 445 of 1938.

Punjab Pre-emption Act (I of 1913), S. 8 — The Cantonment Act (II of 1924), SS. 3, 286 — Area under the control of Cantonment Board — land situated therein whether exempt from the right of pre-emption.

Section 3 of the Cantonment Act, 1924, enacts that the Local Government may, by notification, declare a place in which any part of His Majesty's regular forces are quartered or which, being in the vicinity of any such place, is required for the service of such forces to be a Cantonment for the purposes of the Act and of all other enactments for the time being in force.

Section 286 of the same Act enacts that "the Local Government may by notification extend to any area beyond a

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Cantonment and in the vicinity thereof, with or without restriction or modification, any of the provisions of Chapters IX to XV of the Act or of any rule or bye-law made under this Act for the Cantonment which relates to the subject matter of any of these Chapters and every enactment, rule or bye-law so extended shall apply to that area as if the area were included in the Cantonment."

Held, therefore, that the place where the Cantonment Board, as in the present case, controls the erection of buildings, drainage, cultivation, water-supply, registration of births and other cognate matters such as sanitation, etc., is not a Cantonment within the meaning of s. 8 of the Punjab Pre-emption Act debarring the right of pre-emption because by virtue of s. 286 of the Cantonment Act the rules and bye-laws framed under the Act, as also many of the provisions of the Act, can be extended to an area beyond a Cantonment, but such area does not thereby become a Cantonment.

Second appeal from the decree of Lala Ram Kanwar, Additional District Judge, Rawalpindi, dated 3rd February, 1938, modifying that of Sardar Jawala Singh, Subordinate Judge, 1st Class, Rawalpindi, dated 1st May, 1937, to the extent of enhancing the decretal amount to Rs.10,000, etc.

JAGAN NATH AGGARWAL, for Appellant.

JHANDA SINGH, for Respondents.

RAM LALL J.

RAM LALL J.—Raja Singh plaintiff sued Khazan Singh, the vendee of his brother Sujan Singh for possession by pre-emption of a certain plot of land in Rawalpindi sold by Sujan Singh by a registered deed, dated the 2nd December, 1932, for a consideration stated in this deed to be Rs.10,000. The plaintiff's case was that the consideration had not been fixed in good faith and had in fact not been paid and he, therefore, claimed possession of this property on payment of Rs.2,000, which he fixed as the market value of this property. The defendants pleaded that full consideration had in

fact been paid and further that as the land was situate within the Rawalpindi Cantonment area the right of pre-emption did not arise but if this last contention did not prevail then it was conceded that the plaintiff had the right of pre-emption.

The trial Court held that the land in question was not within the Cantonment area and that, therefore, section 8 of the Pre-emption Act had no application. It further held that the consideration stated in the deed had not been fixed in good faith nor had it been paid. The Court further appointed a commissioner to ascertain the market value of the land in question and on his report it passed a decree in favour of the plaintiff on payment of the sum of Rs.7,500, leaving the parties to bear their own costs. Both parties appealed to the learned District Judge who accepted the vendee's appeal to the extent of raising the amount of Rs.7,500 to Rs.10,000, that is, to the figure stated in the registered deed mentioned above. In other respects he allowed the decision of the trial Court to stand.

Both parties have preferred second appeals to this Court, No.445 of 1938 by the plaintiff, and No.504 of 1938 by the vendee, and these two appeals will be disposed of together by one judgment.

The vendee's only contention before us has been that the land sold is in fact within the Cantonment and therefore accordig to section 8 of the Pre-emption Act the right of pre-emption does not attach to this land. The relevant portion of section 8 on which reliance is placed is in the following terms :—“ Except as may otherwise be declared in the case of any agricultural land in a notification by the Local Government, no right of pre-emption shall exist within any cantonment.” The contention that the land in suit is within a Can-

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tonment is based largely on the fact that the Cantonment Board controls the erection of buildings, drainage, cultivation, water supply, registration of births and other cognate matters such as sanitation, etc. Now, a Cantonment has been defined in section 3 of the Cantonments Act, 1934, to be an area which the Local Government has declared by notification to be a place in which His Majesty's Regular forces are quartered or an area which being in the vicinity of any such place is required for the service of such forces. In other words a notification declaring a certain area as such is a Cantonment. Section 4 of the same Act gives power to the Local Government to alter the limit of a Cantonment. Section 286 enacts that the Local Government "may by notification extend to any area beyond a Cantonment and in the vicinity thereof, with or without restriction or modification, any of the provisions of Chapters IX to XV of the Act or of any rule or bye-law made under this Act for the Cantonment which relates to the subject-matter of any of these Chapters and every enactment, rule or bye-law so extended shall apply to that area as if the area were included in the Cantonment." It is apparent that the rules and bye-laws framed under the Act as also many of the provisions of the Act can be extended to an area beyond a Cantonment but such area does not thereby become a Cantonment. In the present case all that apparently happened is that in order to preserve sanitation and other amenities of life in the Cantonment of Rawalpindi some of the provisions of the Act and bye-laws framed thereunder have been extended to this area. Section 8 can only apply to a Cantonment and not to an area which in fact is not a Cantonment but for certain purposes subjected only to restrictions which applied in the neighbouring Cantonment. It.

appears to me clear, therefore, that the land in suit is not within the Rawalpindi Cantonment, and on this finding the appeal preferred by the vendee must be disallowed. Having regard to all the circumstances in the case I would dismiss the appeal but make no order as to costs in this Court.

So far as the appeal by the plaintiff is concerned the contention that the sale price should not be Rs.10,000 as stated in the deed is based on a consideration of the proviso to section 25 (2) of the Pre-emption Act. The consideration in this case includes an item of Rs.3,600 due on old debts out of which Rs.2,600 was stated to be for interest. The proviso to section 25 (2) of the Pre-emption Act is to the effect that when the sale price stated represents entirely or mainly a debt greatly exceeding in amount the market value of the property, the Court shall fix the market value as the price of the land in suit and may put the vendee to his option either to accept such a value as the full equivalent of the consideration or have the sale cancelled and the vendor and vendee restored to their original position. The market value in this case as found by the commissioner was Rs.7,500 and since the amount of interest is only Rs.2,600 and the old debt stated to be Rs.7,600 including this item of interest it cannot be said that this is greatly in excess of the amount of the market value. Further this matter was not pleaded or put in issue and the only way in which we can give effect to the contention of the plaintiff would be to frame a new issue and remand the case for trial thereof. In the first place I see no good ground for adopting this course and, in the second place, even if this be adopted, in view of the fact that the old debt is only Rs.100 more than the market price as found by the commissioner, I see no hope of the plaintiff

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succeeding on this ground. In these circumstances I would dismiss this appeal also and in view of all the circumstances leave the parties to bear their own costs in this Court.

ADDISON J.—I agree.

A. N. K.

Appeal dismissed.

APPELLATE CIVIL.

Before Addison and Ram Lal JJ.

KEWAL KRISHAN (PLAINTIFF) Appellant,

versus

JAIN BROTHERHOOD, LUDHIANA, AND OTHERS
(DEFENDANTS) Respondents.

Regular First Appeal No. 143 of 1938.

Pre-emption — Vendee — simultaneous purchase by him of a house and two shops adjacent to it — Pre-emptor claiming pre-emption in respect of the house on the basis of previous purchase of another shop also adjacent to the house — Whether pre-emptor's right defeated.

The plaintiff sued J for possession by pre-emption of a house purchased by J. who had bought the same and two shops adjacent to it simultaneously by one sale-deed, the shops being distinct properties apart from the house and plaintiff's right of pre-emption being based on the fact that he had bought a shop previously which was also adjacent to the house in question. J. contended that the plaintiff's right of pre-emption was defeated because their own purchase of the shops adjoining the house in dispute had put them in the same position with respect to pre-emption.

Held (non-suiting the plaintiff) that just as a vendee whose purchase is otherwise open to attack, can defeat the plaintiff's right by removing his defect, *pendente lite*, and clothing himself with a status equal to that of the pre-emptor, so can a vendee defeat a pre-emptor's title, as in the present case, by buying other properties simultaneously with the property in dispute.

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