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such candidature. Hence, he said, s. 82(b) required that they should have been made parties to the petition. We are of opinion that when s. 82(b) talks of allegations of corrupt practice against a candidate it means allegations that a candidate has committed a corrupt practice. Allegations can hardly be said to be "against" one unless they impute some default to him. So allegations of corrupt practice against a candidate must mean that the candidate was guilty of corrupt practice. We are also unable to appreciate how an allegation that a candidate accepted a gratification paid to him to withdraw his candidature is an allegation relating to a corrupt practice. The acceptance of the gratification does not relate to any corrupt practice, for we have earlier shown that the corrupt practice consists in the giving of the gift and not in the acceptance of it.

In the result this appeal fails and it is dismissed with costs.

Appeal dismissed.

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BISHAN SINGH & OTHERS

v.

KHAZAN SINGH & ANOTHER

(S. R. DAS C. J., BHAGWATI, S. K. DAS and SUBBA RAO JJ.)

Pre-emption, nature of the right—Pre-emptor filing suit and obtaining decree—Second pre-emptor of equal degree filing suit for pre-emption—First pre-emptor depositing purchase money and obtaining possession—If suit of second pre-emptor can succeed—Lis pendens—Scope—Punjab Pre-emption Act (Pun. I of 1913), ss. 17, 28.

Upon the sale of certain village land the appellants filed a suit for pre-emption, and a compromise decree was passed allowing pre-emption provided the appellants deposited the purchase amount by a certain date. The appellants deposited the amount and got possession of the land. Before the appellants deposited

the amount, the respondents who were pre-emptors of an equal degree, filed a suit to enforce their right of pre-emption. The appellants contended that the land could be divided between two equal pre-emptors only when both the suits were pending before the court at the time of the passing of the decree, and that the appellants having obtained the decree and paid the amount got substituted in place of the vendees and the respondents could succeed only by establishing a superior right of pre-emption. The respondents countered that they had a statutory right under s. 17 of the Punjab Pre-emption Act to share the land with the appellants and that the appellants, having been substituted in place of the vendees *pendente lite*, were hit by the doctrine of *lis pendens* and could not claim a higher right than the vendees:

Held, that the respondents' suit could not succeed as they did not have a superior right of pre-emption over the appellants who had become substituted in place of the vendees upon payment of the purchase money under their decree.

A pre-emptor has two rights: (1) inherent or primary right to the offer of a thing about to be sold and (2) a secondary or remedial right to follow the thing sold. The secondary right is simply a right of substitution in place of the original vendee.

Dhani Nath v. *Budhu*, 136 P. R. 1894 at p. 511 and *Gobind Dayal* v. *Inayatullah*, (1885) I.L.R. 7 All. 775, followed.

In a suit for pre-emption the plaintiff must show that his right is superior to that of the vendee and that it subsists at the time he exercises his right. This right is lost if before he exercises it another person with an equal or superior right has been substituted in place of the original vendee. The Punjab Pre-emption Act defines the right of pre-emption and provides a procedure for enforcing it. It does not enlarge the content of this right nor does it introduce any change in the incidents of the right. Section 28 of the Act does not preclude the Court from giving a decree for pre-emption in a case where the suits are not joined together and one of the suits has been decreed separately.

The doctrine of *lis pendens* applies only to a transfer *pendente lite*, but it cannot affect a pre-existing right. If the sale is a transfer in recognition of a pre-existing and subsisting right, it would not be affected by the doctrine, as the transfer does not create a new right *pendente lite* but if the pre-existing right became unenforceable by reason of limitation or otherwise, the transfer, though ostensibly made in recognition of such a right, in fact creates only a new right *pendente lite*. The appellants' right of pre-emption was subsisting and was not barred by limitation at the time of the transfer in their favour as they had filed a suit and had obtained a decree and the coercive

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process was still in operation. Consequently the appellants were not hit by the doctrine of *lis pendens* and they acquired an indefeasible right to the land when they took possession of it after depositing the purchase money in court.

Mool Chand v. *Ganga Jal*, (1930) I.L.R. 11 Lah. 258, *Mt. Sant Kaur* v. *Teja Singh*, I.L.R. [1946] Lah. 467, *Mohammad Sadhiq* v. *Ghasi Ram*, A.I.R. 1946 Lah. 322 and *Wazir Ali Khan* v. *Zahir Ahmad Khan*, A.I.R. 1949 East Punj. 193, approved.

Kundan Lal v. *Amar Singh*, A.I.R. 1927 All. 664, disapproved.

The right of pre-emption is effectively exercised or enforced only when the pre-emptor has been substituted for the vendee. A conditional decree whereunder the pre-emptor gets possession only if he pays a specified amount within a prescribed time and which also provides for the dismissal of the suit in case the condition is not fulfilled, cannot bring about the substitution of the decree holder for the vendee before the condition is fulfilled. Such substitution takes effect only when the decree holder fulfils the condition and takes possession of the land.

Deonandan Prashad Singh v. *Ramdhari Chowdhri*, (1916) L. R. 44 I. A. 80, followed.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 255 of 1954.

Appeal by Special Leave from the judgment and decree dated April 29, 1953, of the former Pepsu High Court in R. S. A. Nos. 57 and 130 of 1952, arising out of the judgment and decree dated March 8, 1952, of the Court of Addl. Dist. Judge, Faridkot, in Civil Appeal No. 10 of 1952, against the judgment and decree dated December 4, 1951, of the Court of Sub-Judge II Class, Faridkot, in File No. 13 of 1951.

Jagan Nath Kaushal and *K. L. Mehta*, for the appellant.

Kapur Chand Puri and *Tarachand Brijmohan Lal*, for respondents Nos. 1 to 3.

1958. May 20. The Judgment of the Court was delivered by

Subba Rao J.

SUBBA RAO J.—This appeal by Special Leave against the judgment and decree of the High Court of Patiala and East Punjab States Union raises an interesting question pertaining to the Law of Pre-emption.

The material facts are not in dispute and may be briefly stated: The dispute relates to a land measuring 179 kanals and 2 marlas, situate in village Wanderjatana. On August 26, 1949, defendants 3 to 7 sold the said land to defendants 1 and 2 for a consideration of Rs. 37,611. On August 26, 1950, defendants 8 to 11 instituted a suit, Suit No. 231 of 1950 (Exhibit P. 26/1) in the Court of the Subordinate Judge, II Class, Faridkot, to pre-empt the said sale on the ground, among others, that they had a right of pre-emption. On January 6, 1951, the vendees, i. e., defendants 1 and 2, and the plaintiffs therein, i. e., defendants 8 to 11 (appellants in the present appeal), entered into a compromise. Under the terms of the compromise, the vendees admitted that they had received Rs. 1,700 from defendants 8 to 11 and that defendants 8 to 11 agreed to pay the balance of the consideration, amounting to Rs. 35,911 on the 27th April, 1951. It was further agreed that on the payment of the said amount, they should get possession through Court. As the amount agreed to be paid was in excess of the pecuniary jurisdiction of the Court of the Subordinate Judge, they filed the compromise deed in the Court of the District Judge and on the basis of the said compromise, the District Judge made a decree dated January 23, 1951. It was provided in the decree that in case defendants 8 to 11 failed to pay the balance to the vendees on April 27, 1951, the suit should stand dismissed and that if the said balance was paid on that date, the vendees should deliver possession of the land in dispute to them. Defendants 8 to 11 deposited the balance of Rs. 35,911 on April 23, 1951, and got possession of the land on May 17, 1951.

Before the said defendants (8 to 11) deposited the amount in Court under the terms of the compromise decree, the respondents herein, claiming to be owners of land in the same *patti*, filed Suit No. 13 of 1951 in the Court of the Subordinate Judge, II Class, Faridkot, to enforce their right of pre-emption. To that suit the original vendors were impleaded as defendants 3 to 7, the vendees as defendants 1 and 2 and the plaintiffs in Suit No. 231 of 1950 as defendants 8 to 11.

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Defendants 8 to 11 contested the suit, *inter alia*, on the grounds that the plaintiffs had no right of pre-emption superior to that of theirs, that the suit was barred by limitation and that the whole of the sale consideration had been fixed in good faith and paid.

The learned Subordinate Judge found all the issues in favour of defendants 8 to 11 and dismissed the suit. On the main issue he found that the said defendants, by obtaining a decree for pre-emption before the rival claimants had filed their suit, had become vendees through Court and so the plaintiffs could not succeed unless they had a superior right.

The plaintiffs preferred an appeal to the Additional District Judge, Faridkot, against the said decree. The District Judge held that the plaintiffs and defendants 8 to 11 had equal rights of pre-emption and were entitled to share the sale in the proportion of 3/7 and 4/7 respectively on payment of the proportionate amount of the consideration. On the main question, he took the view that defendants 8 to 11 did not exercise their right of pre-emption when the present suit was instituted for the reason that by the date of the filing of the suit they had not deposited the purchase money in Court. Both the parties filed Second Appeals against the decision of the District Judge in the High Court of Patiala questioning that part of the decree which went against them. The High Court upheld that part of the decree of the learned District Judge holding that the plaintiffs were entitled to a share in the suit property but remanded the suit to the District Judge to give his findings on the following two questions: (1) What was the amount paid by defendants 8 to 11 to the original vendees and whether they paid it in good faith; (2) Whether the case would come under s. 17C, cl. (e) of the Punjab Pre-emption Act (hereinafter to be referred to as the Act). As the High Court refused to certify that the case was a fit one for appeal to the Supreme Court, defendants 8 to 11 preferred the above appeal by obtaining special leave of this Court.

The learned Counsel for the appellants raises the following two contentions before us: (1) Section 28 of

the Pre-emption Act indicates that a property can be divided between equal pre-emptors in terms of s. 17 of the Pre-emption Act only when both the suits are pending before the Court at the time of the passing of the decree; (2) the appellants exercised their right of pre-emption by obtaining a decree or at any rate when they deposited the money payable under the decree and thereby got themselves substituted in place of the original vendees and thereafter, the plaintiffs can succeed only by proving their superior right to them. The learned Counsel for the respondents countered the aforesaid argument by stating that the plaintiffs, being pre-emptors of equal degree, have got a statutory right under s. 17 of the Pre-emption Act to share the land with the appellants, and the appellants, having been substituted in place of the original vendees *pendente lite*, are hit by the doctrine of *lis pendens* and therefore, they cannot claim higher rights than those possessed by the original vendees at the time of the filing of the suit.

Before attempting to give a satisfactory answer to the question raised, it would be convenient at the outset to notice and define the material incidents of the right of pre-emption. A concise but lucid statement of the law is given by Plowden J. in *Dhani Nath* v. *Budhu*(1) thus:

"A preferential right to acquire land, belonging to another person upon the occasion of a transfer by the latter, does not appear to me to be either a right to or a right in that land. It is *jus ad rem alienum acquirendum* and not a *jus in re aliena*.....A right to the offer of a thing about to be sold is not identical with a right to the thing itself, and that is the primary right of the pre-emptor. The secondary right is to follow the thing sold, when sold without the proper offer to the pre-emptor, and to acquire it, if he thinks fit, in spite of the sale, made in disregard of his preferential right."

The aforesaid passage indicates that a pre-emptor has two rights: (1) inherent or primary right, *i.e.*, a right

(1) 136 P. R. 1894 at p. 511.

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to the offer of a thing about to be sold and (2) secondary or remedial right to follow the thing sold.

Mahmood J. in his classic judgment in *Gobind Dayal* v. *Inayatullah* (1) explained the scope of the secondary right in the following terms:

"It (right of pre-emption) is simply a right of *substitution*, entitling the pre-emptor, by means of a legal incident to which sale itself was subject, to stand in the shoes of the vendee in respect of all the rights and obligations arising from the sale, under which he derived his title. It is, in effect, as if in a sale deed the vendee's name were rubbed out and pre-emptor's name inserted in its place".

The doctrine adumbrated by the learned Judge, namely, the secondary right of pre-emption is simply a right of substitution in place of the original vendee, has been accepted and followed by subsequent decisions.

The general law of pre-emption does not recognize any right to claim a share in the property sold when there are rival claimants. It is well-established that the right of pre-emption is a right to acquire the whole of the property sold in preference to other persons (See *Mool Chand* v. *Ganga Jal* (2)).

The plaintiff is bound to show not only that his right is as good as that of the vendee but that it is superior to that of the vendee. Decided cases have recognized that this superior right must subsist at the time the pre-emptor exercises his right and that that right is lost if by that time another person with equal or superior right has been substituted in place of the original vendee. Courts have not looked upon this right with great favour, presumably, for the reason that it operates as a clog on the right of the owner to alienate his property. The vendor and the vendee are, therefore, permitted to avoid accrual of the right of pre-emption by all lawful means. The vendee may defeat the right by selling the property to a rival pre-emptor with preferential or equal right. To summarize: (1) The right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to be sold.

(1) (1885) I.L.R. 7 All. 775, 809. (2) (1930) I.L.R. 11 Lah. 258, 273.

This right is called the primary or inherent right. (2) The pre-emptor has a secondary right or a remedial right to follow the thing sold. (3) It is a right of substitution but not of re-purchase, i. e., the pre-emptor takes the entire bargain and steps into the shoes of the original vendee. (4) It is a right to acquire the whole of the property sold and not a share of the property sold. (5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or the person substituted in his place. (6) The right being a very weak right, it can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place.

The next question is whether this right is modified or otherwise enlarged by the provisions of the Act. Relevant provisions of the Act, material to the present purpose, read thus:

Section 4: "The right of pre-emption shall mean the right of a person to acquire agricultural land or village immovable property or urban immovable property in preference to other persons, and it arises in respect of such land only in the case of sales and in respect of such property only in the case of sales or of foreclosures of the right to redeem such property".

Section 13: "Whenever according to the provisions of this Act, a right of pre-emption vests in any class or group of persons the right may be exercised by all the members of such class or group jointly, and, if not exercised by them all jointly, by any two or more of them jointly, and, if not exercised by any two or more of them jointly, by them severally".

Section 17: "Where several pre-emptors are found by the Court to be equally entitled to the right of pre-emption, the said right shall be exercised,—

(a) if they claim as co-sharers, in proportion among themselves to the shares they already hold in the land or property;

(b) if they claim as heirs, whether co-sharers or not, in proportion among themselves to the shares in which but for such sale, they would inherit the land or property in the event of the vendor's decease without other heirs;

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(c) if they claim as owners of the estate or recognised sub-division thereof, in proportion among themselves to the shares which they would take if the land or property were common land in the estate or the sub-division, as the case may be;

(d) if they claim as occupancy tenants, in proportion among themselves to the areas respectively held by them in occupancy right;

(e) in any other case, by such pre-emptors in equal shares."

Section 19: "When any person proposes to sell any agricultural land or village immovable property or urban immovable property or to foreclose the right to redeem any village immovable property or urban immovable property, in respect of which any persons have a right of pre-emption, he may give notice to all such persons of the price at which he is willing to sell such land or property or of the amount due in respect of the mortgage, as the case may be.

Such notice shall be given through any Court within the local limits of whose jurisdiction such land or property or any part thereof is situate, and shall be deemed sufficiently given if it be stuck up on the *chaupal* or other public place of the village, town or place in which the land or property is situate."

Section 20: "The right of pre-emption of any person shall be extinguished unless such person shall, within the period of three months from the date on which the notice under section 19 is duly given or within such further period not exceeding one year from such date as the court may allow, present to the Court a notice for service on the vendor or mortgagee of his intention to enforce his right of pre-emption. Such notice shall state whether the pre-emptor accepts the price or amount due on the footing of the mortgage as correct or not, and if not, what sum he is willing to pay."

"When the Court is satisfied that the said notice has been duly served on the vendor or mortgagee the proceedings shall be filed."

Section 28: "When more suits than one arising out of the same sale or foreclosure are pending, the plaintiff

in each suit shall be joined as defendant in each of the other suits, and in deciding the suits the court shall in each decree state the order in which each claimant is entitled to exercise his right".

The Act defines the right and provides a procedure for enforcing that right. It does not enlarge the content of that right or introduce any change in the incidents of that right. Section 4 embodies the pre-existing law by defining the right as a right of a person to acquire land in preference to other persons in respect of sales of agricultural lands. Section 13 cannot be read, as we are asked to do, as a statutory recognition of a right of pre-emptors of equal degree to exercise their rights piece-meal confined to their shares in the land. Section 13 confers on a group of persons, in whom the right of pre-emption vests, to exercise that right either jointly or severally, that is to say, either the group of persons or one of them may enforce the right in respect of the entire sale. Section 17 regulates the distribution of pre-empted land when the Court finds that several pre-emptors are equally entitled to the right of pre-emption. But this Section applies only where (1) the right is yet to be exercised and (2) the pre-emptors are found by the Court to be equally entitled to exercise the right. The section does not confer the right on or against a person, who has already exercised the right and ceased to be a pre-emptor by his being legitimately substituted in place of the original vendee. (See *Mool Chand* v. *Ganga Jal* (1) at p. 274 and *Lokha Singh* v. *Sermukh Singh* (2)). Sections 19 and 20 prescribe the procedure for the exercise of the primary right, while s. 28 confers a power on the Court to join together two or more suits arising out of the same sale, so that suitable directions may be given in the decree in regard to the order in which each claimant is entitled to exercise the right. This section is enacted presumably to avoid conflict of decisions and finally determine the rights of the various claimants. The aforesaid provisions do not materially affect the characteristics of the right of pre-

(1) (1930) I.L.R. 11 Lah. 258. (2) A.I.R. 1952 Punj. 206, 207.

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emption as existed before the Act. They provide a convenient and effective procedure for disposing of together different suits, arising out of the same transaction, to avoid conflict of decisions, to fix the order of priority for the exercise of their rights and also to regulate the distribution of the pre-empted land between rival pre-emptors.

The provisions do not in any way enable the pre-emptor to exercise his right without establishing his superior right over the vendee or the person substituted in his place or to prevent the vendor or the vendee, by legitimate means, to defeat his right by getting substituted in place of the vendee a pre-emptor with a superior right to or an equal right with that of the plaintiff.

Nor can we accept the argument of the learned counsel for the appellants that s. 28 precludes the Court from giving a decree for pre-emption in a case where the two suits were not joined together but one of the suits was decreed separately. Section 28 enacts a convenient procedure, but it cannot affect the substantative rights of the parties. We do not see that, if the plaintiffs were entitled to a right of pre-emption, they would have lost it by the appellants obtaining a decree before the plaintiffs instituted the suit, unless it be held that the decree itself had the effect of substituting them in place of the original vendees. We cannot, therefore, hold that the plaintiffs' suit is in any way barred under the provisions of the Act.

This leads us to the main question in this case, namely, whether the appellants having obtained a consent decree on January 23, 1951, in their suit against the vendees and having paid the amount due under the decree and having taken delivery of the property and thus having got themselves substituted in place of the original vendees, can legitimately defeat the rights of the plaintiffs, who, by reason of the aforesaid substitution, were only in the position of pre-emptors of equal degree vis-a-vis the appellants and therefore ceased to have any superior rights. The learned Counsel for the respondents contends that the appellants are hit by the doctrine of *lis pendens* and

therefore the act of substitution, which was effected on April 23, 1951, could not be in derogation of their right of pre-emption, which they have exercised by filing their suit on February 15, 1951. It is now settled law in the Punjab that the rule of *lis pendens* is as much applicable to a suit to enforce the right of pre-emption as to any other suit. The principle on which the doctrine rests is explained in the leading case of *Bellami* v. *Sabine* (1), where the Lord Chancellor said that *pendente lite* neither party to the litigation can alienate.....the property so as to affect his opponent. In other words, the law does not allow litigant parties, pending the litigation, to transfer their rights to the property in dispute so as to prejudice the other party.

As a corollary to this rule it is laid down that this principle will not affect the right existing before the suit. The rule, with its limitations, was considered by a Full Bench of the Lahore High Court in *Mool Chand* v. *Ganga Jal* (2). In that case, during the pendency of a pre-emption suit, the vendee sold the property which was the subject matter of the litigation to a person possessing a right of pre-emption equal to that of the pre-emptor in recognition of that person's right of pre-emption. This re-sale took place before the expiry of the period of limitation for instituting a pre-emption suit with respect to the original sale. The Full Bench held that the doctrine of *lis pendens* applied to pre-emption suits; but in that case, the re-sale in question did not conflict with the doctrine of *lis pendens*. Bhide J. gave the reason for the said conclusion at page 272 thus:

"All that the vendee does in such a case is to take the bargain in the assertion of his pre-existing pre-emptive right, and hence the sale does not offend against the doctrine of *lis pendens*".

Another Full Bench of the Lahore High Court accepted and followed the aforesaid doctrine in *Mt. Sant Kaur* v. *Teja Singh* (3). In that case, pending the suit for pre-emption, the vendee sold the land purchased

(1) (1857) 1 De G. & J. 566; 44 E. R. 842.

(2) (1930) I.L.R. 11 Lah. 258, 273.

(3) I.L.R. [1946] Lah. 467.

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by him to a person in recognition of a superior right of pre-emption. Thereafter, the second purchaser was brought on record and was added as a defendant to the suit. At the time of the purchase by the person having a superior right of pre-emption, his right to enforce it was barred by limitation. The High Court held that that circumstance made a difference in the application of the rule of *lis pendens*. The distinction between the two categories of cases was brought out in bold relief at page 145 thus:

"Where the subsequent vendee has still the means of coercing, by means of legal action, the original vendee into surrendering the bargain in his favour, a surrender as a result of a private treaty, and out of Court, in recognition of the right to compel such surrender by means of a suit cannot properly be regarded as a voluntary transfer so as to attract the application of the rule of *lis pendens*. The correct way to look at the matter, in a case of this kind, is to regard the subsequent transferee as having simply been substituted for the vendee in the original bargain of sale. He can defend the suit on all the pleas which he could have taken had the sale been initially in his own favour."

"However, where the subsequent transferee has lost the means of making use of the coercive machinery of the law to compel the vendee to surrender the original bargain to him, a re-transfer of the property in the former's favour cannot be looked upon as anything more than a voluntary transfer in the former's favour of such title as he had himself acquired under the original sale. Such transfer has not the effect of substituting the subsequent transferee in place of the vendee in the original bargain. Such a transferee takes the property only subject to the result of the suit. Even if he is impleaded as a defendant in such suit, he cannot be regarded as anything more than a representative-in-interest of the original vendee, having no right to defend the suit except on the pleas that were open to such vendee himself".

This case, therefore, expressly introduces a new element in the applicability of the doctrine of *lis pendens*

to a suit to enforce the pre-emptive right. If the right of the pre-emptor of a superior or equal degree was subsisting and enforceable by coercive process or otherwise, his purchase would be considered to be in exercise of that pre-existing right and therefore not hit by the doctrine of *lis pendens*. On the other hand, if he purchased the land from the original vendee after his superior or equal right to enforce the right of pre-emption was barred by limitation, he would only be in the position of a representative-in-interest of the vendee, or to put it in other words, if his right is barred by limitation, it would be treated as a non-existing right. Much to the same effect was the decision of another Full Bench of the Lahore High Court in *Mohammad Sadiq* v. *Ghasi Ram* (1). There, before the institution of the suit for pre-emption, an agreement to sell the property had been executed by the vendee in favour of another prospective pre-emptor with an equal degree of right of pre-emption; subsequent to the institution of the suit, in pursuance of the agreement, a sale deed had been executed and registered in the latter's favour, after the expiry of the limitation for a suit to enforce his own pre-emptive right. The Full Bench held that the doctrine of *lis pendens* applied to the case. The principle underlying this decision is the same as that in *Mt. Sant Kaur* v. *Teja Singh* (2), where the barred right was treated as a non-existent right. The same view was restated by another Full Bench of the East Punjab High Court in *Wazir Ali Khan* v. *Zahir Ahmad Khan* (3). At p. 195, the learned Judges observed:

"It is settled law that unless a transfer *pendente lite* can be held to be a transfer in recognition of a subsisting pre-emptive right, the rule of *lis pendens* applies and the transferee takes the property subject to the result of the suit during the pendency whereof it took place".

The Allahabad High Court has applied the doctrine of *lis pendens* to a suit for pre-emption ignoring the limitation implicit in the doctrine that it cannot affect

(1) A.I.R. 1946 Lah. 322. (2) I.L.R. [1946] Lah. 467.
(3) A.I.R. 1949 East Punj. 193.

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a pre-existing right. (See *Kundan Lal* v. *Amar Singh* (1)). We accept the view expressed by the Lahore High Court and East Punjab High Court in preference to that of the Allahabad High Court.

In view of the aforesaid four Full Bench decisions—three of the Lahore High Court and the fourth of the East Punjab High Court—a further consideration of the case is unnecessary. The settled law in the Punjab may be summarized thus:

The doctrine of *lis pendens* applies only to a transfer *pendente lite*, but it cannot affect a pre-existing right. If the sale is a transfer in recognition of a pre-existing and subsisting right, it would not be affected by the doctrine, as the said transfer did not create new right *pendente lite*; but if the pre-existing right became unenforceable by reason of the fact of limitation or otherwise, the transfer, though ostensibly made in recognition of such a right, in fact created only a new right *pendente lite*.

Even so, it is contended that the right of the appellants to enforce their right of pre-emption was barred by limitation at the time of the transfer in their favour and therefore the transfer would be hit by the doctrine of *lis pendens*. This argument ignores the admitted facts of the case. The material facts may be recapitulated: Defendants 3 to 7 sold the land in dispute to defendants 1 and 2 on August 26, 1949, and the sale deed was registered on February 15, 1950. The appellants instituted their suit to pre-empt the said sale on August 26, 1950, and obtained a compromise decree on January 23, 1951. They deposited the balance of the amount payable on April 23, 1951, and took possession of the land on May 17, 1951. It would be seen from the aforesaid facts that the appellants' right of pre-emption was clearly subsisting at the time when the appellants deposited the amount and took possession of the land, for they not only filed the suit but obtained a decree therein and complied with the terms of the decree within the time prescribed thereunder. The coercive process was still in operation. If so, it follows that the appellants are not hit by the

(1) A.I.R. 1927 All. 664.

doctrine of *lis pendens* and they acquired an indefeasible right to the suit land, at any rate, when they took possession of the land pursuant to the terms of the decree, after depositing in Court the balance of the amount due to the vendors.

We shall briefly touch upon another argument of the learned Counsel for the appellants, namely, that the compromise decree obtained by them, whereunder their right of pre-emption was recognized, clothed them with the title to the property so as to deprive the plaintiffs of the equal right of pre-emption. The right of pre-emption can be effectively exercised or enforced only when the pre-emptor has been substituted by the vendee in the original bargain of sale. A conditional decree, such as that with which we are concerned, whereunder a pre-emptor gets possession only if he pays a specified amount within a prescribed time and which also provides for the dismissal of the suit in case the condition is not complied with, cannot obviously bring about the substitution of the decree-holder in place of the vendee before the condition is complied with. Such a substitution takes effect only when the decree-holder complies with the condition and takes possession of the land.

The decision of the Judicial Committee in *Deonandan Prashad Singh* v. *Ramdhari Chowdhri* (1) throws considerable light on the question whether in similar circumstances the pre-emptor can be deemed to have been substituted in the place of the original vendee. There the Subordinate Judge made a pre-emption decree under which the pre-emptors were in possession from 1900 to 1904, when the decree was reversed by the High Court and the original purchaser regained possession and in 1908, the Privy Council, upon further appeal, declared the pre-emptors' right to purchase, but at a higher price than decreed by the Subordinate Judge. In 1909 the pre-emptors paid the additional price and thereupon again obtained possession. The question arose whether the pre-emptors were not entitled to mesne profits for the period between 1904 to 1909, i.e., during the period the judg-

(1) (1916) L. R. 44 I. A. 80.

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ment of the first appellate Court was in force. The Privy Council held that during that period the pre-emptors were not entitled to mesne profits. The reason for that conclusion was stated at page 84 thus:

"It therefore follows that where a suit is brought it is on payment of the purchase-money on the specified date that the plaintiff obtains possession of the property, and until that time the original purchaser retains possession and is entitled to the rents and profits. This was so held in the case of *Deokinandan* v. *Sri Ram* (1) and there Mahmud J. whose authority is well recognized by all, stated that it was only when the terms of the decree were fulfilled and enforced that the persons having the right of pre-emption become owners of the property, that such ownership did not vest from the date of sale, notwithstanding success in the suit, and that the actual substitution of the owner of the pre-empted property dates with possession under the decree".

This judgment is, therefore, a clear authority for the position that the pre-emptor is not substituted in the place of the original vendee till conditions laid down in the decree are fulfilled. We cannot, therefore, agree with the learned Counsel that the compromise decree itself perfected his clients' right in derogation to that of the plaintiffs. But as we have held that the appellants complied with the conditions laid down in the compromise decree, they were substituted in the place of the vendee before the present suit was disposed of. In the aforesaid view, the other questions raised by the appellants do not arise for consideration. In the result, the appeal is allowed and the suit is dismissed with costs throughout.

Appeal allowed.

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(1) (1889) I. L. R. 12 All. 234.