1968, can, however, be taken. There is no order as to costs of this reference. A copy of this order may be sent to the Additional District Judge, Gurdaspur, who has made the reference.

K.S.

FULL BENCH

Before D. K. Mahajan, P. C. Pandit and H. R. Sodhi, JJ.

HAZARI AND OTHERS,—*Appellants*

versus

ZILA SINGH AND OTHERS,—*Respondents*

E. S. A. 1131 of 1968

May 30, 1969.

Code of Civil Procedure (Act V of 1908)—Section 146 and Order 20 Rules 14 and 16—Decree of pre-emption passed—Decree-holder—Pre-emptor becoming owner by complying with Order 20, Rule 14—Decree transferred before obtaining possession of the pre-empted property—Transferee—Whether can execute such decree and obtain possession.

Law of pre-emption—Pre-emption and other suits—Distinction between—Stated.

Held (by majority, Pandit and Sodhi, JJ., Mahajan, J. Contra), that a pre-emption decree being a personnal one is not transferable under law and not right in the decree can be created in favour of a transferee. Consequently he cannot claim to obtain possession of the pre-empted property in execution of that decree. To allow him such a right will mean that the Court considers the pre-emption decrees to be transferable or assignable. In other words, it will have to be held that the pre-emptor decree-holder is competent to create rights in respect of the decrees in favour of strangers and this will hit the law of pre-emption, according to which a pre-emption decree is not transferable. Section 146 of the Code of Civil Procedure being expressly made subject to other provisions of the Code, will apply to a case, only where Order 21, rule 16 of the Code is inapplicable. It applies to those cases in which the subject-matter of the suit, which ultimately results in the decree sought to be executed, as well as the decree itself are transferable. It does not apply where the subject-matter of the proceedings cannot be transferred. Hence the transferee of a pre-emption decree cannot obtain possession of the pre-empted property in execution of that decree.

(Paras 62 and 65)

Held (*per Pandit, J.*), that pre-emption suits are a class by themselves. In such a suit, the plaintiff-pre-emptor, before getting possession of the property, has first to establish his title to it and that he does only afer obtaining a decree

for pre-emption and then complying with its terms. After he secures a decree in his favour, he has to deposit the purchase money within a fixed time. On his doing so, he gets two rights—(a) title to the property, and (b) right to get its possession from the vendee. Even after obtaining a decree, he may change his mind and refuse to deposit the purchase money within the prescribed period. In that case, his suit will be dismissed and he will not get any rights in the property. Such a situation does not arise in cases of other kinds. There when the plaintiff brings a suit for possession of certain property on the basis of his title, that title to the property, unlike that of a pre-emptor, is already with him. The pre-emptors title to the property accrues under Order 20, rule 14, Code of Civil Procedure, on the date when he deposits the purchase money in accordance with the pre-emption decree. Similarly, during the pendency of a pre-emption suit, a pre-emptor cannot transfer the pre-emptional property in any manner inconsistent with the object of the suit for pre-emption. If he does that, he loses his pre-emptive right. Even after the pre-emption suit is decreed, the *decree* being personal in character cannot be transferred so as to entitled the purchaser to obtain possession of the property by executing it. Then again, after the title to the property has accrued to the pre-emptor on his complying with the terms of the decree, when he sells the property to another person, the transferee's rights will be determined on the basis of the sale-deed in his favour. If the vendee has been given only the title to the property and not the right to take its possession by executing the pre-emption decree, then he cannot obtain possession by that method. Everything will depend on what actually has been *validly* transferred by the pre-emptor decree-holder in his favour. All these are the special characteristics of a pre-emption suit and a pre-emption decree and they are not to be found in cases of other kind.

(Para 85)

Held (*Per Sodhi, J.*), that a pre-emption decree cannot be transferred so as to enable the transferee to execute the same. A right to pre-empt whether based on Mohammadan Law, custom or a statute, depends on a pre-emptor possessing certain personal qualifications. It is inconceivable that just by transferring the decree, the pre-emptor decree-holder can substitute the transferee in his place and confer on him those personal qualifications which are basis of the right to pre-empt. To held that a transferee of a pre-emption decree gets a rights to execute a decree and obtain possession of the property, no matter he is an utter stranger and not possessed of the qualifications as required by law, will be contrary to the scheme and object of the law of pre-emption. It makes no difference whether the pre-emptor in a pre-emption suit deposits the purchase money as enjoined in the decree passed under Order XX rule 14, Code of Civil Procedure, and acquires title to the land before he transfers the decree. A right to the title of the land and a right to transfer a pre-emption decree so as to entitle the transferee to execute it are two distinct matters and one cannot be confused with the other.

(Paras 92 and 93)

Held (*Per Mahajan, J. Contra.*), that when pre-emption decree is passed, the pre-emption money has to be paid in Court on or before a date specified by the decree. Till the amount is so paid, the right of pre-emption can be said to be a purely personal right and in that sense not transferable. Up to the stage of the decree and before the money is deposited, as contemplated by Order 20, rule 14, of the Code, the decree itself remains a personal decree and objection can be taken to its transfer because the same result follows when the pre-emptor transfers his right to the stranger to continue the suit or when he transfers the decree. But moment the provisions of Order 20, rule 14, Civil Procedure Code are complied with, a different situation comes into being. The decree no longer remains a personal decree. The pre-emptor becomes the owner of the property with all the incidence of ownerships. Therefore, any transfer of property by the pre-emptor or even the transfer of the decree by the pre-emptor, after he has complied with the provisions of Order 20, rule 14, Civil Procedure Code, will not be open to question. The delivery of possession of the pre-empted property to the decree-holder pre-empted does not effect the right of pre-emption. Hence a purchaser of property from a pre-emptor-decree-holder of which he has become the owner after complying with the provisions of Order 20, rule 14, of the Code can executive the decree in order to obtain possession of the property purchased by him.

(Para 14)

Case referred by the Hon'ble Mr. Justice D. K. Mahajan, on September, 30, 1968 *to a Full Bench for decision of an important question of law involved in the case. The case was finally decided by a Full Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan, the Hon'ble Mr. Justice Prem Chand Pandit and the Hon'ble Mr. Justice H. R. Sodhi on* 30*th May,* 1969.

Execution Second Appeal from the decree of the Court of Shri B. S. Yadav, Additional District Judge, Rohtak, dated 15*th May,* 1968, *affirming with costs that of Shri Prikshat Kumar Goel, Sub-Judge,* 1*st Class, Jhajjar, dated* 30*th March,* 1968, *holding that the subsequent vendees are entitled to execute the decree and hence the three objection petitions filed by the judgment-debtors are dismissed with costs.*

JUDGMENT

MAHAJAN, J.—This order will dispose of three Execution Second Appeals Nos. 1131, 1132 and 1133 of 1968, arising out of execution proceedings, in which important questions of law have arisen. All these appeals will get settled by the answer that is given to these questions of law. They were initially placed before me in Single Bench; and by my order dated the 30th of September, 1968, I referred them to a Full Bench in view of the fact that the question of law that required determination, were of considerable importance. Moreover, it was contented that the Single Bench decision

of this Court in *Ram Singh and others* v. *Gainda Ram and others* (1) and the decision of the Lahore High Court, which the learned single Judge followed, namely, *Mehr Khan and Shah Din* v. *Ghulam Rasul and others* (2) were expressed in too wide a language; and, in any case, did not lay down the correct rule of law.

(2) Before proceeding to state the facts, I may state the principal question of law afresh which requires determination:—

> "Whether the purchaser of land from a pre-emptor, of which the pre-emptor has become the owner in pursuance of a pre-emption decree after complying with the provisions of Order 20, rule 14, Civil Procedure Code, could execute the decree in order to obtain possession of the land purchased by him?".

The other questions of law are subsidiary to this question and will be dealt with at their proper place.

(3) The facts, which have given rise to these appeals, may now be stated: Dhara Singh, respondent, effected three sales of agricultural land. The first sale was of 27 Kanals 4 marlas and was effected on the 20th September, 1960. The second sale was of 36 Kanals and 19 Marlas and was effected on the 23rd of November, 1960; and the third sale was of 33 Kanals 18 Marlas and was effected on the 26th of March, 1961. The vendees were Hazari, Amar Singh and Bhan Singh—the present appellants. Neki, father's brother of Dhara Singh, vendor, filed three suits for pre-emption; they being suits Nos. 313, 369 and 368 of 1961 regarding the first, the second and the third sale respectively. On the 31st of October, 1962, the suit regarding the first sale was decreed on payment of Rs. 3,500 to be deposited on or before the 15th of January, 1963. On the 7th of November, 1962, the remaining two suits were also decreed on payment of Rs. 5,000 and Rs. 8,000 respectively to be deposited on or before the 15th of January, 1963. The pre-emptor deposited the amounts in terms of Order 20, rule 14 of the Code of Civil Procedure. on the 23rd of December, 1962, that is, before the 15th of January, 1936, the last date fixed for deposit. Three appeals were preferred by the vendees against the pre-emption decrees. The learned Senior Subordinate Judge dismissed the appeals in Suits Nos. 313 and 369 of 1961; but modified the decree in Suit No. 368 of 1961. The pre-emptor was asked to deposit an additional sum of Rs. 2,000 on or before the

(1) A.I.R. 1953 Punjab 163.
(2) I.L.R. II (1921) Lahore 282.

1st of March, 1963. This amount too was deposited by Neki within the time prescribed. On the 5th of December, 1962, Neki transferred the lands, which were the subject-matter of the decrees, to Zile Singh and his co-vendees. Against the decision of the lower appellate Court, four Second Appeals were preferred; three by the first vendees and one by Neki. The appeals preferred by the first vendees were Regular Second Appeals Nos. 280 to 282 of 1963 and that by Neki was Regular Second Appeal No. 830 of 1963. His appeal was in Suit No. 368 of 1961. On the 7th of April, 1963, Neki died and Dhara Singh, Ram Kishan and Balbir Singh were brought on the record as his legal representatives by the vendees by an application under Order 22, rules 3 and 4 of the Code of Civil Procedure. They are the father and his two sons. Dhara Singh was impleaded as the legal representative being the nearest collateral of the deceased. One of his sons was impleaded as there was a will by Neki in his favour. The second son was also impleaded along with his father and his brother. It may also be mentioned that the vendees from Neki, who may, for the sake of convenience, be described as the second vendees, became parties only at the stage of the second appeals. They made an application under Order 22, rule 10 of the Code of Civil Procedure on 29th of May, 1963. In this application, it was stated that "Neki had sold the suit land along with some other land to the undermentioned 10 persons, according to the shares noted in the registered deed No. 2783 dated the 15th February, 1963." Thereafter, the names of Zile Singh and his co-vendees are stated. In paragraph 3, it was prayed that—

> "* * The following persons may please be brought on record as respondents being successors-in-interest of the said Neki. * * *"

This application was allowed by Gurdev Singh, J. on the 13th of July, 1963. The learned Judge passed the following order :—

> "Allowed subject to all just exceptions, on the condition that a separate application for the appointment of guardian *ad litem* of the minors, who are sought to be impleaded, is made within a fortnight."

On the 13th of August, 1963, an application was made under Order 32, rule 1 and 3, as comtemplated in the order of Gurdev Singh, J. This application was allowed on the 24th of September, 1963, by Harbans Singh J., subject to all just exceptions. On the 17th of September, 1964, all the three second appeals were dismissed. The vendees then preferred three appeals under Clause 10 of the Letters

Patent. In the appeal, that was filed by Hazari and others, the first vendees, Zile Singh and his co-vendees, that is the set of second vendees, were impleaded as respondents along with Dhara Singh and his two sons who had been brought on the record by the learned Single Judge as the legal representatives of Neki deceased. Dhara Singh was represented before the learned Single Judge by Mr. Parkash Chand Jain; and Zile Singh and others were represented by Mr. U. D. Gaur. In the Letters Patent, the same counsel represented the parties. These appeals were rejected by a Division Bench on the 27th of July, 1965; and this judgment is reported as *Hazari and others* v. *Neki and others* (3). Against the decision of the Letters Patent Bench, appeals were taken to the Supreme Court. The Supreme Court also dismissed those appeals; and the decision of the Supreme Court is reported as *Hazari and others* v. *Neki (dead) by his legal representatives & Ors.* (3). Both before the Letters Patent Bench and the Supreme Court, the second vendees were parties. In fact, in the Supreme Court, only they contested the appeals filed by the first vendees. Thus the decree for pre-emption in favour of Neki became final; Neki being also represented by the second vendees by the order of the learned Single Judge of this Court.

(4) After the decision of the Supreme Court, three execution applications were filed by the second transferees. Dhara Singh preferred three execution applications for the execution of the decree on the ground that he is entitled to execute the same in place of Neki, decree-holder, being his legal representative. Dhara Singh is the same person who was the vendor in the original suits and had sold the land to Hazari, Amar Singh and Bhan Singh, which had been successfully pre-empted by Neki. Later, Shri Ved Parkash, counsel for Dhara Singh, made a statement that he did not want to proceed with the executions and that he had no claim to the property; and thus the three execution applications filed by Dhara Singh were dismissed. The vendees, however, objected to the execution applications filed by the second transferees. The objections were :—

(1) that Risal Singh (who was one of the second set of vendees) had no right to execute the decree, as the decree in question had not been assigned to him;

(2) that the pre-emption amount had not been deposited in Court in time;

(3) I.L.R. (1966) 1 Pb. 333=1966 P.L.R. 29.

(4) 1968 Cur. L.J. 703=1968 P.L.R. 823.

(3) that Risal Singh was not legal representative of Neki deceased;

(4) that the sale of the property by Neki was fictitious; and

(5) that Neki had no right to transfer the property.

These objection petitions were contested by Risal Singh (second vendee). The executing Court framed the following issue:—

"Whether decree in question is not executable on the grounds stated in the objection petition?"

The trial Court dismissed the objection petitions on the 30th March, 1968, holding that the second vendees were entitled to execute the decree. Before the executing Court, the learned counsel for the judgment-debtor, Shri Raghber Dayal, Advocate, Jhajjar, only argued one point and conceded all the other points. He only pressed the point that the decree was not executable under section 47 of the Code of Civil Procedure. No contest was raised—

(a) regarding the validity of the sale; and

(b) regarding the deposits having not been made within time, as directed by the pre-emption decree.

(5) The principal point, that was canvassed in the executing Court, was that the second transferees cannot execute the decree under section 47 of the Code of Civil Procedure; inasmuch as they were not successors-in-interest of the decreeholders. It was also urged that the purchasers from the pre-emptor are not otherwise entitled to execute the decree because the transfer of the decree obtained in a pre-emptoin suit is invalid; and, therefore, the second vendees could not execute the decree. Their only remedy was by a regular suit for possession. Against the decisions of the executing Court, appeals were taken to the learned Additional District Judge, Rohtak. Before the learned Judge, the counsel for the appellants did not dispute that the additional preemption amount of Rs. 2,000 in Suit No. 368 of 1961 was deposited in the Treasury in time. The only point, that was argued before him, was that vendees from Neki, that is the second vendees, are not entitled to execute the preemption decree, as they cannot be said to be representatives of Neki. And in support of this contention, reliance was placed on the decision of the Punjab High Court in *Ram Singh's case* (1).

(6) On this matter, the learned Judge took the view that it was not necessary to discuss whether the second vendees could execute the decree under Order 21, rule 16, Civil Procedure Code because, in his opinion, they were entitled to do so under section 146 of the Code of Civil Procedure. And for this view, the learned Judge relied on the decisions in *Satyanarayan* v. *Sindhu Bai Sharma,* (5), *N. N. Ananthanarayana Iyer and others* v. *Agricultural Income-tax and Sales-tax Officer and others* (6) and *Ravi Parkash* v. *Chuni Lal* (7). He also referred to the decisions in *Ambika Prasad Sexana* v. *Sm. Bhagirathi Debi Aggarwalla and others* (8) and *Ponniah Pillai* v. *T. Natarajan Asari* (9). In this view of the matter, he dismissed the appeals of the first vendees.

The first vendees have come up in second appeal to this Court.

(7) The contentions of the learned counsel for the appellants are:—

(1) That the pre-emption decree is a personal decree; and, therefore, it cannot be transferred. The sale deed, Exhibit D. 1, though purporting to be the sale of land, is, in fact, a sale of the decree. Therefore, the second vendees have no right to execute the decree as the transfer in their favour, on the basis of which they have come to Court, is not valid in law,

(2) That the second vendees are not the representatives of Neki, the decreeholder; and, therefore, they cannot execute the decree and their remedy is by a separate suit;

(3) That, in any case, the decree could only be executed under Order 21, rule 16, Civil Procedure Code and not under section 146 of that Code; and as the requirements of Order 21, rule 16 have not been complied with, the execution application has no merit and must fail.

(8) Before I deal with the above contentions, it will be proper to reiterate the well-settled propositions of law which admit of no dispute. The vendor has no right to pre-empt his own sale. It is well established that the right of pre-emption is a personal right and its

(5) A.I.R. 1965 A.P. 81.
(6) A.I.R. 1959 Kerala 180.
(7) A.I.R. 1967 Pb. & Hra. 268.
(8) A.I.R. 1968 Cal. 242.
(9) A.I.R. 1968 Mad. 190.

basis is, to put it in the words of Mahmood J., *Ram Sahai* v. *Gaya and others* (10).

> "* * the exclusion of such strangers as are objectionable to the pre-emptive co-sharers of the vendor. * *"

Though the right is personal, it cannot now be urged that it does not attach to land and, therefore, would not pass to the next heirs by inheritance. It was so held by the Supreme Court in *Hazari and others* v. *Neki* (4). The relevant observations are quoted below:—

> "* * The statutory right of pre-emption, though not amounting to an interest in the land, is a right which attaches to the land and which can be enforced against a purchaser by the person entitled to pre-empt. * * *".

It was further held, that:—

> "* * We are of the opinion that if an involuntary transfer takes place by inheritance, the successor to the land takes the whole bundle of the rights which go with the land including the right of pre-emption."

Again it is well settled that the right of pre-emption is a right of substitution. Reference in this connection may be made to the decision of Mahmood J. in *Gobind Dayal* v. *Inavatullah*, (11), wherein the learned Judge observed as follows:—

> "* * The right of pre-emption is not a right of re-purchase either from the vendor or from the vendee, involving any new contract of sale; but it is simply a right of substitution, entitling the pre-emptor, by reason of a legal incident to the pre-emptor, by reason of a legal incident to which the 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 has derived his title. It is, in effect, as if in a sale deed, the vendee's name were rubbed out and the pre-emptor's name inserted in its place. * * *".

These observations have stood the test of time. There is no reported decision which has ever doubted the. These observations were relied upon in the Full Bench decision of this Court in *Hukam Singh* v. *Hakumat Rai* (12).

(10) I.L.R. (1885) All. 107.

(11) I.L.R. 7 All. 775 (F.B.).

(12) I.L.R. (1967) 2 Pb. & Hra. 426 (F.B.)=1967 P:L:R: 743=A:I:R: 1968 Pb. & Hra. 110 (F.B.).

(9) The right of pre-emption in regard to rural property, that is agricultural land and village immovable property, is based on different foundation to that in regard to urban property. Originally this right was exercised on the basis of custom. But in Punjab, the basis of the right of pre-emption, as now administered, is statutory. (*See* Punjab Pre-emption Act No. 1 or 1913). This Act has been radically amended by the Punjab Pre-emption (Amendment) Act 10 of 1960, whereby further limitation have been placed on the exercise of that right by reducing the category of persons in whom it vested under the original Act and also the qualifications on which its exercise depended.

(10) It will be proper at this stage to set out the relevant provisions of the Statute so far as they have bearing on the present controversy. They are sections 4, 6 and 10 and are reproduced below for facility of reference:—

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

Nothing in this section shall prevent a Court from holding that an alienation purporting to be other than a sale is in effect a sale.

* * * * * *

(6) A right of pre-emption shall exist in respect of village immovable property and, subject to the provisions of clause (b) of section 5, in respect of an agricultural land, but every such right shall be subject to all the provisions and limitations in this Act contained.

* * * * *

(10) In the case of sale by joint-owners, no party to such sale shall be permitted to claim a right of pre-emption.

* * * *"

It is also to be kept in mind that one canot trevel outside the provisions of the Act and draw from the decisions in other States where the law of pre-emption is not codified and is founded on custom and Mohammedan law. In this connection, I may refer to the observations of the Supreme Court in *Hazari's case,* namely :—

"It is necessary to emphasise that we are dealing in this case with the statutory right of pre-emption under Punjab Act

I of 1913 and its subsequent amendment and not with the right of pre-emption under the Mohammedan law."

(11) In the light of what has gone above, I propose to deal with the contentions of the learned counsel for the appellants.

CONTENTION No. 1.

(12) It is not necessary to embark upon the decision of the question, whether the pre-emption decree is a purely personal decree. I will assume, for the purposes of this case, that it is a personal decree. So far as the Pre-emption Act is concerned, there is no statutory prohibition regarding its transfer. The argument of the learned counsel for the appellants is that it is a well known rule of pre-emption law that the pre-emptor cannot, in the guise of his pre-emptive right, bring in a stranger and substitute him in his place as the decreeholder. It is maintained that this device will defeat the very objection of pre-emption law which is to keep out the introduction of strangers in the village community.

(13) So far as this contention is concerned, no exception can be taken to it. I am prepared to agree with the learned counsel that the pre-emptor cannot transfer his rights during the pendency of the pre-emption suit to a stranger so as to enable the stranger to get substituted in his place and thereby become the decreeholder in the pre-emption suit. The only question is, up to what stage this cannot happen? In my view, the answer to the problem is furnished by Order 20, rule 14, Civil Procedure Code, the relevant part of which is quoted below:—

"0.20. r. 14 (1) Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall—

(a) specify a day on or before which the purchase-money shall be so paid, and

(b) direct that on payment into Court of such purchase-money, together with the costs *(if any) decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such

payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

(2) * * * * * *

* * * * " *

(14) It will appear from the language of this rule that a pre-emption decree is passed before the pre-emption money has to be paid in Court on or before a date specified by the decree. Till the amount is so paid, the right of pre-emption can be said to be a purely personal right and in that sense-not transferable. One may even proceed further and hold that up to the stage of the decree and before the money is deposited, as contemplated by Order 20, rule 14, Civil Procedure Code, the decree itself remains a personal decree and objection can be taken to its transfer because the same result follows when the pre-emptor transfers his right to the stranger to continue the suit or when he transfers the decree. But moment the provisions of Order 20, rule 14, Civil Procedure Code are complied with, a different situation comes into being. The decree no longer remains a personal decree. The pre-emptor becomes the owner of the property witn all the incidence of ownership. Therefore, any transfer of property by the pre-emptor or even the transfer of the decree by the pre-emptor, after he has complied with the provisions or Order 20, rule 14, Civil Procedure Code, would not be open to question. The burden of the argument of the learned counsel for the appellants, however, was that the transferee of a pre-emptor, after the pre-emptor has complied with Order 20, rule 14, has no right to execute the decree. This argument is merely based on the contention that the decree is a personal decree. To me, this argument appears to be wholly fallacious. After compliance with Order 20, rule 14, Civil Procedure Code, the decree ceases to be a personal decree and no longer remains a purely personal decree. This argument of the learned counsel can also be demonstrated to be palpably wrong in another manner. I put it to the learned counsel, what would happen when the pre-emptor sells the property pre-empted by him after he had obtained possession in execution having complied with the provisions of Order 20, rule 14? The learned counsel had to admit that such a sale would be a valid sale. If such a sale is a valid sale and is not hit by any rule of pre-emption, I fail to see how a sale of the property, the title to which has passed on to the pre-emptor under Order 20, rule 14, would not be a valid sale,

merely because the pre-emptor has not obtained possession of the property in execution of the decree. In my opinion it was open to the pre-emptor after he had complied with the provisions of Order 20, rule 14. Civil Procedure Code either to sell the property or to sell the decree. It is of little conesquence as to whether the decree is executed by the pre-emptor or by his transferee. Execution of the decree in this situation has no bearing on the questions of the validity of the transfer. Execution is merely a mode to get assistance from the Court. If the transaction of transfer is valid and which, in my opinion, must be held to be valid as indicated above, it hardly matters whether the decree is executed by the pre-emptor or by his transferee.

(15) The learned counsel for the appellants while admitting, that the pre-emptor who had successfully pre-empted the property and obtained possession of the same could validly transfer the same to a stranger, vehemently urged that he could not transfer it to a stranger, before he takes possession of the same after complying with the provisions of Order 20 rule 14, Civil Procedure Code. In other words, the contention is that the sale of property, after complying with the provisions of Order 20, rule 14 and without obtaining possession of the same by the pre-emptor decreeholder, is not open to a pre-emption suit. I fail to understand the logic of this argument. All sales of agricultural land or village immovable property are liable to be pre-empted. The essential requirement is that there has to be a sale; and, in the present case, there was a sale. The sale was by a person in whom the title of the property had vested. Therefore, it is idle to suggest that under the pre-emption law, the same could not be pre-empted. An owner of property can sell the property which is not in his possession; and it cannot be urged that only those sale can be pre-empted in which the possession has been delivered by the vendor to the vendee. The right of pre-emption arises as soon as a sale is effected. Just as a sale after obtaining possession could have been pre-empted, similarly a sale without delivery of possession to the vendee could have been pre-empted. In principle, delivery of possession does not effect the right of pre-emption.

(16) The learned counsel for the appellants urged that for all suits of pre-emption, limitation is prescribed either in section 30 of the Pre-emption Act or in Article 10 of Limitation Act of 1908 which

has now been replaced by Article 97. Section 30 of the Pre-emption Act is in the following terms:—

"30. In any case not provided for by Article 10 of the Second Schedule of the Indian Limitation Act, 1908, the period limitation in a suit to enforce a right of pre-emption under the provisions of this Act shall, notwithstanding anything in Article 120 of the said schedule, be one year—

(1) In the case of a sale of agricultural land or of village immovable property, from the date of attestation (if any) of the sale by a Revenue Officer having jurisdiction in the register of mutation maintained under the Punjab Land Revenue Act, 1887,
or, from the date on which the vendee takes under the sale physical possession of any part of such land or property,
whichever date shall be the earlier;

(2) In the case of a foreclosure of the right to redeem village immovable property or urban immovable property, from the date on which the title of the mortgagee to the property becomes absolute;

(3) In the case of a sale of urban immovable property, from the date on which the vendee takes under the sale physical possession of any part of the property."

And Articles 10 and 97 of the relevant Limitation Acts are as follows:--

"ARTICLE 10 OF THE OLD LIMITATION ACT

Description suit	*Period of Limitation*	*Time from which period begins to run.*
To enforce right of pre-emption whether the right is founded on law or general usage or on special contract.	One year	From the time purchaser takes, under the sale, sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered."

"ARTICLE 97 OF THE AMENDED LIMITATION ACT

Description of suit	*Period of Limitation*	*Time from which period begins to run*
To enforce right of pre-emption whether the right is founded on law or general usage or on special contract.	One year	When the purchaser takes under the sale, sought to be impeached, physical possession of the whole or part of the property sold, or, where the subject-matter of the sale does not admit of physical possession of the whole or part of the property, when the instrument of sale is registered."

(17) If a reference is made to the *terminus a quo* in these provisions, it will be found that under section 30 of the Pre-emption Act, in the case of agricultural land, it is from the date of attestation of the mutation or from the date on which the vendee takes, under the sale, physical possession of any part of such land or property, whichever date is earlier. Thus, under section 30, in the instant case, the limitation to pre-empt the sale will only start either from the date of the attestation of the mutation or when the vendee takes, under the sale, physical possession of any part of the land. In the case of Article 10, the *terminus a quo* starts when the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold and where such property does not admit of physical possession, when the instrument of sale is registered. And the only innovation made in Article 97 of the 1963 Limitation Act is that the *terminus a quo* starts whether the purchaser has taken physical possession of the whole or part of the property sold. Thus, the difference between the two Articles is that under Article 10, whole of the property has to be taken physical possession of by the vendee; whereas in the case of Article 97, the *terminus a quo* will start from the date when the vendee takes physical possession of the whole or even part of the property sold. But one fact is clear that a suit for pre-emption

would not be barred unless it is brought after the period prescribed with reference to the *terminus a quo*.

(18) So far as the present case is concerned, the sale was by a registered deed and its subject-matter was capable of physical possession and its physical possession could not be taken because of the objection of the first vendees. I am told that the physical possession has now been taken in execution proceedings. Therefore, limitation to pre-empt the sale would start from the date the physical possession of the land was taken. I may also state that the land, in the instant case, is capable of physical possession and it has not been urged that it is not so capable of. All that is said is that it was in possession of the vendees at the time of the sale. The position of the first vendees, after the transfer of the title of the land to the pre-emptor, became that of a trespasser and, therefore, the rightful owner or his successor-in-interest could take possession of the land and he did take possession in execution, though after a considerable time; and, therefore, it cannot be suggested that because considerable period had expired between the sale and the taking of possession, the suit for pre-emption would be barred. In any event, all that has to be seen is, whether a transaction is a sale; and once it is held to be a sale, it *ipso facto* follows that it can be pre-empted under the pre-emption law, that is the Punjab Pre-emption Act No. 1 of 1913. The question of limitation will only arise when somebody takes into his head to pre-empt the sale. Limitation merely bars a remedy and does not confer a right. The right was conferred by the Punjab Pre-emption Act and nothing has been shown which takes away that right. Therefore, this argument of the learned counsel is pointless.

(19) Another argument of the learned counsel for the appellants was that the pre-emption decree, even after compliance with Order 20, rule 14, Civil Procedure Code, was subject to appeal and, therefore, the pre-emptor's title was precarious. How does this argument affect the question, that falls for determination, is beyond my comprehension. If a person buys property which is subject to litigation, he takes the consequences. But that has nothing to do with the validity of the transfer. If ultimately, the title of the vendor is established, the title of the vendee *per se* is established; the transaction being between th vendor and the vendee. If, on the other hand, the vendor fails in the litigation, the title of the vendee will also fail because, he has purchased only the right, title and interest of his vendor; and if the vendor has none, he also gets none. Therefore,

consideration of *lis pendens* has no bearing on the question of the validity of the transfer.

(20) I now proceed to deal with the cases on which the entire foundation of the argument of the learned counsel for the appellants rested for the contention that the sale of the property by the pre-emptor, after he has complied with the provisions of Order 20, rule 14, Civil Procedure Code, is invalid because the transfer is, in fact, the transfer of a decree—the decree being purely personal. This basic case, on which reliance has been placed, is the decision of Mahmood, J., in *Ram Sahai* v. *Gaya & Ors.* (10). Reliance has been placed on the observations of the learned Judge at page 111 of the Report, which ar quoted below:—

> "A decree once passed cannot, as we have already said, be questioned by any of the parties thereto when the decree is being executed, and if a decree for pre-emption could be validly transferred, the effect would be to place the transferee in possession without the trial of the question whether such transferee had the pre-emptive right in preference to the vendee against whom the decree was obtained. Nor could the sale of a pre-emptive decree be regarded as giving ries to a fresh cause of action for a separate suit to enforce pre-emption, and it follows that, not only the rights of the vendee-judgment-debtor, but also those of other co-sharers, might be injured by allowing the transferee of a pre-emptive decree to take out execution. On the other hand, in a case like the present, where the pre-emption property and not the decree has been transferred, the effect of executing the decree can only be to place the pre-emptor-decree-holder in possession of the pre-emptional property, and the sale-deed executed by him, if valid, would give rise to a separate cause of action for a pre-emptive suit to be instituted by any person or persons who may consider the sale as having infringed their pre-emptive right. In the present case, whether the sale-deed of the 29th November, 1883, be valid or inalid, it must necessarily remain in abeyance till the pre-emptional property under the decree; and, under this view, the present case is analogous to one in which the pre-emptor-decree-holder, immediately after possession under the decree, sells the property."

(21) In order to appreciate the above observations, it will be necessary to state the facts of the case in which the observations were made. They are as under :—

> "The respondents in this case obtained a decree for pre-emption on the 30th June, 1883, under the terms of which the purchase-money was to be paid into Court within two months from the date of the decree becoming 'final'. This decree was appealable to the High Court, but before the expiry of the period of limitation prescribed by law for the appeal, the High Court was closed on account of the long vacation and did not re-open till the 19th November, 1883, when no appeal was preferred. On the 29th November, 1883, the respondents executed a sale-deed conveying the property (to which the decree of the 30th June, 1883, related) to one Ambika Prasad. On the same day, the respondents filed an application for execution of the decree, and, after reciting that they had sold the property included in the decree to Ambika Prasad, prayed that the latter might be allowed to deposit the purchase-money, and they (the decree-holders) might be placed in possession, in order that they might make over possession of the property to the new vendee. The Court below accepted the deposit, and allowed execution of the decree in the manner prayed."

(22) It will be seen from the facts stated above that the sale was effected after a decree for pre-emption had been passed and before complying with the provisions of Order 20, rule 14, Civil Procedure Code. Thus what was sold was merely the vendor's right to get title to property under the pre-emption decree and not the property because, on the date of the sale, the title to the property did not vest in the vendor. That is why, the decree-holder's application for execution was allowed to proceed; and that is why, the learned Judge emphasised:—

> "**That sale deed did not transfer the decree, but the property, to the proprietary possession of which the pre-emptor decree-holder was entitled subject only to the payment of the purchase-money within time.* * *.".

(23) Thus it would be seen that this case is no authority for the proposition that the sale of property, after the pre-emptor has complied with the provisions of Order 20, rule 14, Civil Procedure Code,

is not a valid sale. I have no quarrel with the actual decision because in the circumstances of that case, the transferee from the pre-emptor could not be permitted to execute the decree because the sale deed did not transfer the property to the transferee as the transferor had no title in the property on the date when he executed the sale deed. The obserations of the learned Judge must necessarily be confined to the facts of that case; and if the learned Judge was laying down that such a sale would be invalid, even after the title to property had fully vested in the pre-emptor as is contended for by the learned counsel for the appellants, with utmost respect to the learned Judge and with great humility, I would venture to disagree with him. It is a well known proposition of law—' that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode 'of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.' (*vide* the observations of the Lord Chancellor, Earl of Halsbury, in *Quinn* v. *Leathem* (13). Moreover, at the time, when the decision in *Ram Sahai's case* was rendered, the Civil Procedure Code of 1882 was in force. Section 214 of that Code was in these terms:—

> "214. *Suit to enforce right of pre-emption.*—When the suit is to enforce a right of pre-emption in respect of a particular sale of property, and the Court finds for the plaintiff, if the amount of purchase-money has not been paid into Court, the decree shall specify a day on or before which it shall be so paid, and shall declare that on payment of such purchase-money, together with the costs (if any) decreed against him, the plaintiff shall obtain possession of the porperty, but that if such money and costs are not so paid, the suit shall stand dismissed with costs."

In the Code of Civil Procedure, which was enacted in 1908, this provision was replaced by Order 20, rule 14; and the words "whose title

(13) A.C. 495 at p. 566.

thereto shall be deemed to have accrued from the date of such payment" are new. This makes all the difference. The title of property did not accrue to the pre-emptor under section 214 of 1882 Code on the date of the payment. He merely got a right to obtain possession under the decree. If this is kept in view, the observations of Mahmood, J., present no difficulty and would not militate with the view, I have taken of the matter on the basis of Order 20, rule 14, Civil Procedure Code of 1908.

(24) The next case cited is *Mehr Khan and Shah Din* v. *Ghulam Rasul and Ors.* (14). The facts of this case are analogous to the facts of the case in *Ram Sahai's* (10), decision. The pre-emption decree was passed on the 17th of June, 1918; and the decree directed the payment of the balance of the sale price within one month. The decree-holder sold his rights in the decree on the 6th of July, 1918; and the execution application was presented on the 8th of July, 1918, on which the deposit of the balance of the sale price was also made. There is no discussion in this judgment and the learned Judges merely followed the decision in *Ram Sahai's case* (10), and what I have said regarding that decision equally applies to this case.

(25) The next case relied upon is reported as *Lashkari Mal* v. *Ishar Singh and another* (15). In this case, the pre-emptor obtained a decree for pre-emption on the 28th of February, 1898. The decree directed the deposit of Rs. 1,840. On the 1st of March, 1898, the decree-holder executed a deed of transfer purporting to gift all his rights under the decree in favour of his grandson, who was to pay the decretal money into the Court and execute the decree and take possession of the land. The transferee, after paying the money into Court, sought execution of the decree; and it was observed by Rattigan, J., as follows:—

> "* * As under the provisions of section 214 of the Civil Procedure Code, a pre-emptor's right to or in the property do not accrue until he complies with the terms of the decree, the sale by the former pre-emptor to his grandson was merely a transfer of the right to obtain the property by compliance with the conditions of the decree and not the property itself, and was, therefore, not a sale of immovable property

(14) I.L.R. 2 (1921) Lahore 282.
(15) 94 P.R. 1902.

subject to the right of pre-emption within the meaning of section 9 of the Punjab Laws Act * * *".

These observations support the view I have taken while dealing with the decision in *Ram Sahai's case* (10). On facts, the case is similar to the facts of that case.

(26) The next case relied upon is the decision of Kapur, J. (as he then was), in *Ram Singh and others* v. *Gainda Ram & Ors.* (1). The facts of this case are similar to the facts of the present case; and the learned Judge applied to these facts the rule in *Mehr Khan's case* (2). There is no discussion about this matter and it was not brought to the notice of the learned Judge that the rule in *Mehr Khan's case* (2), applied to a different set of facts. In my view, the observations in this case based on *Mehr Khan's case* (2), with utmost respect to the learned Judge, cannot be accepted as laying down the correct rule of law; and I have no hesitation, whatever, from disagreeing with it.

(27) The only other case, to which a reference need be made, is the decision of Stogdon, J., in *Jowala Sahai & Ors.* v. *Ram Rakha* (16). While dealing with the question that the right to execute the decree for pre-emption could not be assigned, it was observed while dealing with the case—*Sarju Prasad* v. *Jamna Prasad*—an unreported decision of the Allahabad High Court, that—

"* * *The case, therefore, differs from that of *Sarju Prasad* v. *Jamna Prasad* in which the proprietary right in the property appears to have been transferred. Even if such right had been transferred in the present case we see no reason why the transferee should not be entitled to execute the decree. Such transfer would be operated as fresh sale of the property and would have conferred a fresh cause of action upon pre-emptors. If the transfer in the present case had been one of sale the judgment-debtors, if they are pre-emptors as against the transferee, could not have resisted his right to present possession though they might have recovered the property from by a suit for pre-emption. It may be that the transaction between the decree-holder and his transferee is one of sale of the property though ostensibly it is not so, but it is clear that questions of this nature

(16) 78 P.R. 1896.

and questions as to preferential right of pre-emption cannot be gone into by a Court executing the decree. The decree-holder had a perfect right to sell his property subject to the right of pre-emptors to buy it, such rights must be asserted by separate suit and cannot be alleged as a bar to the transferee's claim to present possession.**"

(28) These observations are in line with the view that I have taken in this case; and the fact, that this case took a different view from *Mehr Khan's case* (2), was noticed by Mehr Singh, J. (as he then was), in *Hazari's case* (3).

(29) Barring the decision of Kapur, J., no case has been cited at the bar, wherein it has been held that the sale of property by the pre-emptor, after he has obtained a decree for pre-emption and has complied with the provisions of Order 20, rule 14, Civil Procedure Code, is bad or illegal and is not liable to pre-emption. It is now well settled that the title to the property passes to the pre-emptor when he complies with the provisions of Order 20, rule 14, Civil Procedure Code; and the pre-emptor can deal with it in the same manner as a full owner. See in this connection the decision of the Punjab and Haryana High Court in *Hukam Singh Nadir Singh* v. *Hakumat Rai Nihal Chand* (12). This decision referred to another Full Bench decision of this Court in *Ganga Ram* v. *Shiv Lal* (17). The latter decision was approved by the Supreme Court in *Hazari's case* (3).

(30) Moreover, if the contention of the learned counsel for the appellants, that the transfer in question offends the letter and spirit of the pre-emption Law is examined with reference to the well known rule of pre-emption law that the right of pre-emption is a right of substitution, the invalidity of the argument becomes apparent. It cannot be said in the instant case that the second vendee has been substituted for the pre-emptor in the sale deed executed by the vendor in favour of the first vendee. The pre-emptor has effected a fresh sale to the second vendee. Thus the sale by the pre-emptor being an independent transaction does not offend the rule. The second vendee does not take the property under the first sale. He takes it under the second sale. So far as the first sale is concerned,

(17) I.L.R. (1964) 1 Pb. 555=1964 P.L.R. 251.

substitution of the pre-emptor has taken place by virtue of the compliance with the provisions of Order 20, rule 14, Civil Procedure Code, that is, the pre-emptor will be read as the vendee instead of the vendor. But on the facts of the case before the Allahabad High Court in *Ram Sahai's case* (10), and the decisions in which the facts were similar to those of that case, the rule will definitely be offended. What happened in all these cases was that instead of the pre-emptor, his transferee, in reality, got substituted and no new transaction of sale came into being. This consideration also supports the view which I have taken of the matter.

(31) In my opinion, there can be no manner of doubt that in the instant case, the sale of the property or even that of the decree to the transferee of the pre-emptor cannot be held to be invalid or contrary to any principles of the pre-emption law. I would, therefore, repel the first contention of the learned counsel for the appellants.

CONTENTIONS NOS. (2) AND (3):

(32) So far as these contentions are concerned, there are two aspects of the matter. In the first instance, the second vendees were brought on the record as the representatives of the pre-emptor and were the only contesting parties in the Supreme Court. Undoubtedly, they are parties to the decree and, as such, have the right to execute the decree. It cannot be doubted that they are the representatives of their transferor within the meaning of section 146 and also within the meaning of section 47 of the Civil Procedure Code. One cannot lose sight of the fact that in view of section 47, a separate suit by the second transferees would be barred. They being parties to the decree, all questions relating to the execution, discharge or satisfaction of the decree have to be determined in accordance with the provisions of section 47 of the Civil Procedure Code by the executing Court and not by a separate suit. In any event, they are the representatives of the pre-emptor within the meaning of section 146; and I need only refer to the two decisions of the Supreme Court which fully support this conclusion:—

(1) *Jugalkishore Saraf* v. *M/s. Ram Cotton Co. Ltd.*, (18) and

(2) *Smt. Saila Bala Dassi* v. *Sm. Nirmala Sundari Dassi and another* (19).

(18) A.I.R. 1965 S.C. 376.

(19) A.I.R. 1958 S.C. 394.

In the latter case, the decision of the Madras High Court in *Koypathodi Moidin Kutty (died) and others* v. *A. K. Doraiswami Aiyar* (20) was approved.

(33) The only other argument of the learned counsel for the appellants with regard to this contention, which must be noticed, is that, in fact, the transfer by the pre-emptor to the second vendees was an assignment of the decree; and therefore, the provisions of Order 21, rule 16, Civil Procedure Code, should have been complied with. I am unable to agree with this contention. What the pre-emptor transferred was the property of which he had become the full owner under the sale deed, Exhibit D.I. This transfer incidentally gave the decree-holder the right to the benefits of the decree. The transferee of the decree-holder would also get the benefits of the decree under the statutory provisions of section 146 of the Civil Procedure Code. In the present case, the decree as such was not assigned. The property was sold. The decree was merely the evidence of title to the property of the decree-holder. In any event, I have already held, that even if the decree-holder had transferred the decree, there could be no legal objection to it. But in order to apply a particular provision of law, one must look to the real nature of the transaction; and the real nature of the transaction is out and out a sale and not an assignment of the decree. Therefore, the contention, that Order 21, rule 16, Civil Procedure Code, has not been complied with, is really spacious.

(34) After giving the matter my careful consideration, I am of the view that the transferees of the decree, in the facts and circumstances of this particular case, were entitled to execute the decree and obtain possession of the land which they had purchased from the pre-emptor decree-holder. In this view of the matter, I would dismiss all the three appeals with costs.

PANDIT, J.—I have persued the judgment prepared by D. K. Mahajan, J. With great respect to him, I have not been able to persuade myself to agree with him. I am, therefore, writing my separate judgement.

(36) The facts giving rise to these three connected Execution Second Appeals Nos. 1131 to 1133 of 1968 are not in dispute and are as under :—

Dhara Singh, respondent No. 11, sold 98 Kanals and 1 Marla of agricultural land situate in village Badhani, District Rohtak, to

(20) A.I.R. 1952 Mad. 51.

Hazari and his brothers Amar Singh and Bhan Singh, appellants, by means of three deeds, dated 20th September, 1960, 23rd November, 1960, and 6th March, 1961, in respect of 27 Kanals and 4 Marlas, 36 Kanals and 19 Marlas and 33 Kanals and 18 Marlas, respectively. These three sales gave rise to three pre-emption suits Nos. 313, 369 and 368 of 1961, which were filed by Neki, father's brother of Dhara Singh, vendor, in 1961, on the ground of his relationship with the vendor. After contest, suit No. 313 of 1961 was decreed on 31st October, 1962, and the others on 7th November, 1962. The vendees filed appeals and during their pendency, on 5th December, 1962, by a registered deed, Neki transferred the entire land measuring 98 Kanals and 1 Marla, which was the subject-matter of the three suits, to Zile Singh and others, respondents Nos. 1 to 10 after he had deposited the pre-emption money in all the suits within time. The learned Senior Subordinate Judge, Rohtak, dismissed the appeals against the decrees in suits Nos. 313 and 369 of 1961, but modified the decree in suit No. 368 of 1961 by directing the plaintiff to deposit a further sum of Rs. 2,000 on or before 1st March, 1963. The vendees then filed regular second appeals in this Court and the pre-emptor preferred a cross-appeal challenging the increase of Rs. 2,000. During the pendency of these appeals, Neki died on 7th April, 1963. Thereupon the vendees moved an application under Order 22, rule 4, Code of Civil Procedure, to bring on record the legal representatives of Neki, deceased, namely, Dhara Singh, vendor, respondent No. 11, and his two sons Ram Kishan and Balbir Singh, respondents Nos. 12 and 13. That application was granted. Zile Singh and others, respondents Nos. 1 to 10, claiming themselves to be the successors-in-interest of Neki, made an application under Order 22, rule 10, Code of Civil Procedure, praying that they be impleaded as parties to the second appeal. Their prayer was granted subject to all just exceptions. All the four appeals were dismissed by Khanna, J. on 17th September, 1964. Against that decision, Letters Patent Appeals were filed, but they also failed. The case is reported as *Hazari and others* v. *Neki and others* (3). The matter was then taken to the Supreme Court, by special leave, which affirmed the decision of this Court and dismissed the appeals on 25th January, 1968,—vide *Hazari and others* v. *Neki (dead) by his legal representatives and others* (4).

(37) Dhara Singh and his sons Ram Kishan and Balbir Singh respondents Nos. 11 to 13, the legal representatives of Neki, deceased, then filed execution applications. Their counsel, however, subsequent, made a statement that he did not want to proceed with the

said applications. The second vendees then applied to the executing Court that they had a right to continue the execution applications. Objections were taken by Hazari, Amar Singh and Bhan Singh, the first vendee, *inter alia* on the grounds that the second vendees had no right to execute the decrees, as the same had not been assigned in their favour and that they were not the legal representatives of Neki, deceased. It was also contended that the sale of the land in dispute by Neki was fictitious and, in any case, he had no right to transfer the said property. The objections of the first vendees were dismissed both by the executing Court and later, on appeal, by the learned Additional District Judge, Rohtak.

(38) Against that decision the present three execution second appeals were preferred by Hazari and his two brothers, Amar Singh and Bhan Singh, the first vendees. These appeals came up for hearing before Mahajan, J., in the first instance. According to the learned Judge, the question that required determination in these cases was whether the purchaser of land from a pre-emptor was entitled to obtain possession of the same from the vendees in execution of the decree for pre-emption passed in his favour. Since, according to him, the correctness of the decisions of a learned Single Judge of this Court in *Ram Singh and others* v. *Gainda Ram and others* (1), and a Division Bench of the Lahore High Court in *Mehrkhan and Shah Din* v. *Ghulam Rasul* (2), was in question, he referred these cases to a Full Bench. That is how the matter has been placed before us.

(39) I wish to make it clear that in these appeals, we are not concerned with the validity of the sale effected by Neki in favour of the second vendees. The only question for decision is whether the second vendees can get the assistance of the Court in obtaining possession of the land in dispute from the first vendees by executing the pre-emption decrees passed in favour of the pre-emptor or they will have to file a separate suit on the basis of the registered sale-deed executed in their favour on 5th December, 1962.

(40) One of the arguments raised on their behalf was that on the death of Neki, during the pendency of the second appeals in this Court, they applied under Order 22, rule 10, Code of Civil Procedure, for being impleaded as parties, since they claimed themselves to be the successors-in-interst of Neki. This prayer was

granted subject to all just exceptions, with the result that they remained parties to the litigation right up to the Supreme Court stage and as a matter of fact, it were they who contested the appeal of the other side before the Supreme Court. That being so, according to the learned counsel, as they were parties to the decrees, they could execute the same.

(41) On the death of Neki, the appellants (first vendees) made an application under Order 22, rule 4, Code of Civil Procedure, to bring on record his legal representatives, namely, Dhara Singh, respondent No. 11, and his two sons Ram Kishan and Balbir Singh, respondents Nos. 12 and 13. This application was accepted. It is true that the second vendees also moved an application under Order 22, rule 10, Code of Civil Procedure, and they too were impleaded subject to all just exceptions. Obviously, they wanted to safeguard their own interests as well and see that Neki's legal representatives did not let them down during the progress of the litigation. It is significant to mention that in the life time of Neki, they made no efforts at any stage to substitute themselves in his place, even though Neki had sold the land in dispute to them on 5th Decembers, 1962, after depositing the purchase money. It is plain that each and every party to a decree is not authorised in law to execute it. It is only that person in whose favour the decree has been granted, or in certain cases his legal representative or the valid assignee of the decree, who can execute it. As a matter of fact, in the case in hand, nothing was said about the rights of the second vendees to execute the decrees in the previous litigation. It is pertinent to mention that even while giving the history of the case the Supreme Court did not even make a reference to the sale of the land in dispute made by Neki pre-emptor in their favour. The only question determined by the Supreme Court was whether the right of pre-emption survived even after the death of Neki. In the Letters Patent Appeals, which are reported as *Hazari and others* v. *Neki and others* (3) *towards the end* of the judgment, this is what was said about the second vendees and their rights—

> "The only other matter to which a brief reference may be made is that before his death the deceased-plaintiff transferred his right to the respondents other than Dhara Singh vendor and his two sons, and in this connection the learned counsel for the appellants-vendees refer to *Mehr Khan* v. *Ghulam Rasul*

(2), to contend that a dercee for pre-emption is not transferable and the transferee cannot executive it. Somewhat different opinion was expressed by the learned Judges in *Jowala Sahai* v. *Ram Rakha* (16). But it is not necessary to go into this matter in these appeals for the estate of the deceased-plaintiff is being represented by Dhara Singh and his sons as his legal representatives and that is in law sufficient representation of him. The second vendees can have recourse to any proceedings, in regard to which they are advised, to enforce the transfer in their favour. The question of a decision, in so far as the transfer in their favour is concerned, does not arise in these appeals."

(42) A perusal of the above would thus show that the question as to whether the decrees for pre-emption were transferable or not and whether the transferees could, execute them, was left open to be determined in some further proceedings at their instance.

(43) For deciding the point in controversy, I shall assume and proceed on the basis that the sale of the land in dispute made by the pre-emptor by virtue of the deed, dated 5th December, 1962, in favour of the second vendees was valid.

(44) Let us first see what actually was transferred by Neki to the second vendees under the sale-deed in question. It was produced before us by the learned counsel for the appellants and was duly persued. It did not mention that the decree, passed in favour of the pre-emptor on 31st October, 1962, and 7th November, 1962, had been assigned in favour of the second vendees. The sale-deed only stated that land measuring 98 Kanals 1 Marla had been sold to them. It was mentioned therein that the pre-emptor had got the said land by virtue of the three pre-emption decrees. It is notworthy that regarding the possession of the land in dispute, it was specifically mentioned in the deed that the same had been given to the second vendees after having received the purchase money from them and the vendor, thereafter, had no connection with the land. Under the registered sale-deed, therefore, the pre-emptor transferred only the titled of the land to the second vendees and stated therein that its possession had also been handed over to them.

(45) Under the provisions of Order 20, rule 14, Code of Civil Procedure, after the deposit of the purchase money, the pre-emptor got two rights—(1) his title to the property accrued from the date of

such payment and (2) he got entitled to the possession thereof from the vendee judgment-debtor. One of the rights, namely, the title to the property (i.e., ownership rights), Neki did transfer by the sale-deed to the second vendees. With regard to the other, it was not so transferred. It was not said that the right to get possession of the land by executing the decree was also given to them. On the other hand, it was specifically mentioned that possession had already been delivered to the second vendees on the receipt of the purchase money from them. On the averments in the sale-deed, therefore, it could not be said that the second vendees were given the right to get possession of the land by executing the decrees. They could not, consequently, exercise that right under the decrees. On the other hand, when Neki himself had stated in the registered sale-deed that he had handed over possession of the land to the second vendees, it is doubtful if he too could get possession of the land by executing the decrees, because he could have been met with the plea that he had already got its possession and transferred the same to the second vendees. At any rate, the second vendees could not seek the assistance of the Court for obtaining possession of the land by executing the decrees on the basis of the sale-deed in their favour. It is not their case that subsequent to the execution of the sale-deed, Neki had, by another deed, transferred the right to get possession of the land also to them. For that purpose, another registered deed had to be executed since this was also a right in immovable property of the value of more than Rs. 100.

(46) From the contents of the sale-deed, it is apparent that Neki represented that he had secured the full fruits of the decrees and nothing remained to be achieved by executing them. He thus did not transfer the right to take possession from the first vendees, though the same had vested in him. So, it cannot be held that the second vendees can obtain possession from the first vendees by executing the decrees on the plea that they are claiming under the decree-holder, Neki. The sale of the proprietary rights in the land to them by Neki did not clothe them with the right to obtain possession thereof by the execution of the decrees, because such a right was not transferred to them by Neki, although it had already accrued to him at the time the sale was made. Even if the decrees were transferable, after the purchase money had been dposited in Court, in the absence of the assignment of that right, it could not be said to have vested in and exercisable by the second vendees. If at all, in the absence of

an assignment,, this right would devolve on the personal legal representatives of Neki and not the second vendees, who could not be said to be claiming that right under Neki. Their proper remedy was by way of a suit.

(47) If the assertion in the sale-deed is taken to be correct, the second vendees had taken possession from the pre-emptor decree-holder and the decrees did not require to be executed by obtaining possession. After-all the charter of rights of the second vendees was the sale-deed in their favour and, according to it, no execution of the decrees was required as the vendor stated that he had given possession to the vendees, which statement was accepted by them. He did not tell them that the possession was with the first vendees, which he had yet to take and the same could be taken by them by executing the decrees.

(48) If in spite of the sale-deed, Neki had not delivered possession of the land to the second vendees, after having obtaining it from the first vendees, their remedy would have been to file a suit for possession against him. Why should they not do so by instituting a suit against the first vendees and why should they be allowed the better and higher right of obtaining possession by the execution of the decrees?

(49) It is common ground between the parties that the second vendees can execute the pre-emption decrees if they can show that their case is governed by the provisions of either Order 21, rule 16, or section 146, Code of Civil Procedure. If they cannot take advantage of either of these two provisions, undoubtedly, they would not be able to execute the decrees and get possession of the land in dispute from the first vendees. Let us consider as to whether Order 21, rule 16, applies to their case. The relevant part of Order 21, rule 16 reads—

> "Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the applications were made by such decree-holder.

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution."

(50) A bare reading of this provision would show that where a decree has been transferred by assignment *in writing* or by operation of law, the transferee can execute such a decree, provided that where the decree has been transferred by an assignment, notice of the execution application shall be given to the transferor and the judgment-debtor and the decree will not be executed until the Court has heard their objections, if any, to the execution.

(51) In the instant case, it is not the position of any party that the interest of the decree-holder in the decrees had been transferred by operation of law, and, therefore, the only question is whether that had been transferred by assignment in writing. From the perusal of the sale-deed, dated 5th December, 1962, as I have already mentioned above, it would be clear that decrees passed in favour of the pre-emptor had not been assigned to the second vendees. So it has to be concluded that there was *in fact* no assignment of the pre-emption decrees in favour of the second vendees. This point was more or less conceded by the learned counsel for the respondents, who, however, submitted that the second vendees would execute the decrees under the provisions of section 146, Code of Civil Procedure.

(52) This apart, even under the law, a pre-emption decree being a personal one is not capable of being transferred. It was held by Mahmood J., in a Bench decision in *Ram Sahai* v. *Gaya* (10)—

"And if a decree for pre-emption were capable of transfer, so as to enable the transferee to obtain possession of the pre-emptional property in execution of that decree, it is clear that the object of the right of pre-emption would be defeated, for the transferee of the decree may be as much a stranger as the vendee against whom the decree was obtained, or that the latter may be a pre-emptor of a lower grade than the pre-emptor who originally obtained the decree."

(53) This decision was followed by a Bench of the Lahore High Court consisting of Broadway and Harrison, JJ., in *Mehr Khan* v. *Ghulam Rasul* (2). So even if the pre-emptor wanted to transfer the

decrees by assignment, it could not be done under the law and such a transfer would be invalid.

(54) A pre-emption decree is, under the law, either transferable or not. I am of the view that it cannot be transferred. Even if it be assumed for the sake of argument that it is transferable, in the case in hand, I have already held above as a fact, that it had not been so transferred.

(55) The Courts below have also not said that the second vendees could execute the decrees by virtue of the provisions of Order 21, rule 16, Code of Civil Procedure. That is why the procedure prescribed in that rule was not followed. It is, therefore, to be held that the second vendees cannot take advantage of the provisions of Order 21, rule 16, Code of Civil Procedure.

(56) Let us now examine the provisions of section 146, Code of Civil Procedure, and see whether the second vendees can derive any benefit therefrom. Section 146 is in these terms:—

> "Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceedings may be taken or the application may be made by or against any person claiming under him."

Under this section, if any proceeding can be taken by 'A', then the same proceeding can also be taken by other person *claiming under 'A'*. The argument raised on behalf of the second vendees is that if the pre-emptor could execute the decrees, they, being persons claiming under him, could also do so by virtue of the provisions of this section.

(57) In the instant case, leaving aside the second vendees, I am doubtful if the pre-emptor himself could execute the decrees. After having categorically stated in the sale-deed dated 5th December, 1962, that he had handed over the possession of the land to the second vendees after having received the purchase money from them, how does it then lie in his mouth to say, after a number of years that he wanted to get possession of the land after executing the pre-emption decree? If I am right in saying so, then the question of the execution of the decrees by the second vendees will obviously not arise. If the pre-emptor himself cannot execute the decrees, no person *claiming under him* can have better rights than him and execute them.

(58) Now let us assume that the pre-emptor in the present case could execute the decrees. The question to be seen is whether the second vendees can, *for the purpose of execution of the pre-emption decrees,* be considered to be persons *claiming under the pre-emptor decree-holder.*

(59) On what basis can the second vendees say that they are, for the purpose of the execution of the decrees, claiming under the pre-emptor decree-holder? They can only rely on the registered sale-deed executed by the pre-emptor in their favour on 5th December, 1962. That is the only document which is the repository of their rights. It, however, does not say that the second vendees had been given the right to execute the pre-emption decrees, although it had been executed after the passing of the decrees and depositing the purchase money to be paid thereunder. No right whatever in the decrees was, as a matter of fact, created by the decree-holder in favour of his vendees. It cannot, therefore, be said that the second vendees could seek the assistance of the Court and get possession of the land in dispute by executing the decrees claiming under the pre-emptor. For the purpose of executing the decrees, they could not, therefore, be said to be *claiming under* the pre-emptor decree-holder.

(60) Secondly, as I have already said above, in the sale-deed, it was specifically mentioned by the pre-emptor that he had handed over the possession of the land in dispute to the second vendees after having received the purchase price from them. If they had already taken possession on 5th December, 1962, what other possession were they seeking from the executing Court by making an application for execution of the pre-emption decrees?

(61) Thirdly, as I mentioned above, after the deposit of the purchase money, the pre-emptor under Order 21, rule 16, Code of Civil Procedure, got two rights—

(a) title to the land and (b) the right to receive its possession from the first vendee. By the sale-deed, he parted only with one right, namely, the first one. He did not transfer the second right, but on the other hand said that the possession of the land had already been given to the second vendees. In other words, he did not, in the circumstances, feel the necessity of transferring the other right. How can then the second vendees seek possession of the land by executing the decrees *claiming* under the pre-emptor?

(62) Fourthly, as I have already said above, the pre-emption decrees were not, under the law, transferable and no rights in the decrees could be created in favour of the vendees and, consequently, they could not claim to obtain possession of the land in execution of those decrees. To allow them such a right will mean that the Court considers the pre-emption decrees to be transferable or assignable. In other words, it will have to be held that the pre-emptor decree-holder is competent to create rights in respect of the decrees in favour of strangers and this will hit the law of pre-emption, according to which a pre-emption decree is not transferable. Section 146 starts with the words "Save as otherwise provided by this Code or by any law for the time being in force." The section is expressly made *subject to* the other provisions of the Code or of *any law for the time being in force.* If by applying the provisions of this Section and thus permitting the transferees (second vendees) to execute the pre-emption decrees some other principle of law is offended, namely, that a decree for pre-emption cannot be transferred, then this section will not be made applicable to such a case.

(63) If a pre-emption decree is transferable, then, I have already held above, that in the instant case it was not so transferred.

(64) Fifthly, an application for execution by the transferee or assignee of a decree is covered by Order 21, rule 16, which is a specific provision in the Code and wherein a definite procedure is prescribed for that purpose. One cannot by-pass that specific provision, by taking recourse to a general provision, like section 146. It was not disputed that Order 21, rule 16 is a special provision, while section 146 a general one. As I have already said, section 146 is expressly made *subject to other provisions of the Code of Civil Procedure also;* one cannot thus over-ride the provisions of Order 21, rule 16 by applying section 146.

(65) Sixthly, section 146 will apply to a case, only where Order 21, rule 16 is inapplicable. It applies to those cases in which the subject matter of the suit, which ultimately results in the decree sought to be executed, as well as the decree itself are transferable. It does not apply where the subject-matter of the proceedings cannot be transferred.

(66) Learned counsel for the second vendees, however, referred to a decision of the Supreme Court in *Jugalkishore Saraf* v. *Messrs Raw Cotton Co. Ltd.* (18), which was followed in *Sm. Saila Bala Dassi* v. *Sm. Nirmala Sundari Dassi* (19). In *Jugalkishore Saraf's case* (18), it

was held that a transferee of a debt, in respect of which a suit was pending, was entitled to execute the decree which was subsequently passed therein, under section 146 of the Code of Civil Procedure Code, as a person claiming under the decree-holder even though an application for execution by him would not lie under Order 21, rule 16, and it was further observed that the words "save as otherwise provided" only barred proceedings which would be obnoxious to some provision of the Code. It would thus be seen that the transfer in the Supreme Court case was of the subject-matter of the suit before the decree was passed. Besides, even when the decree was ultimately made in that case, it could not be argued that that particular decree was not transferable under the law, like a decree for pre-emption. It was under those circumstances that the Supreme Court held that section 146, Code of Civil Procedure, would be applicable. In the instant case, the sale-deed was executed in favour of the second vendees *after* the pre-emption suits had been decreed. Moreover, as I have already said above, a pre-emption decree, under the law, could not be transferred.

(67) In *Smt. Saila Bala Dassi's case* (19) reliance was placed on *Jugalkishore Saraf's case* (18) and it was held:

> "Section 146 was introduced for the first time in the Civil Procedure Code, 1908, with the object of facilitating the exercise of rights by persons in whom they come to be vested by devolution or assignment, and being a beneficient provision should be construed liberally and so as to advance justice and not in a restricted or technical sense."

(68) The distinguishing features pointed out by me regarding *Jugalkishore Saraf's case* (18) equally apply to this ruling as well. According to the second authority, the point to be determined is whether the second vendees have come to be vested with the right to execute the pre-emption decrees either by devolution or assignment. It is only then that they can exercise that right under section 146, Code of Civil Procedure. Assignment, undoubtedly, takes effect by some positive voluntary act. As I have already held above, the right to execute the decrees had not been assigned by the pre-emptor decree-holder in their favour in the sale-deed dated 5th December, 1962. Let us now see whether that right had devolved upon them. Devolution is involuntary and by operation of law. The word "devolve" has been defined in "The Law Lexicon of British India" by P. Ramanatha Iyer, at page 330, as follows:—

> "A term used where an estate devolves upon another by operation of law, and without any voluntary act of the previous

owner, passes from one person to another. 'Devolve' means to pass from a person dying to a person living; the etymology of the words shows its meaning" (per Leach. M.R., Parr v. Parr 1 My. & K. 648). An estate is said to "devolve" on another when, by operation of law, and without any voluntary act of the previous owner, it passes from one person to another; but it does not devolve from one person as the result of some positive act or agreement between them. The word is itself of intransitive signification, and does not include the result of an act which is intended to produce a particular effect. It implies a result without the intervention of any voluntary actor. (Francisco V. Aguiree, 29 Pac. 495, 497, 94 Calif. 180)."

(69) The right to execute the pre-emption decrees, on the death of Neki, devolved on his personal legal representatives and not on the second vendees. We should not confuse the rights in the land in dispute with the rights under the pre-emption decrees. The right to execute the decrees was not, under the sale-deed, transferred by the pre-emptor in favour of the second vendees. The same would, therefore, devolve on the legal representatives of Neki after the latter's death. In the pre-emption suits, the right of Neki to pre-empt the land was being challenged by the first vendees. After Neki's death, it was only his legal representatives who could continue the suits and say that they had a superior right of pre-emption as against the first vendees. The second vendees, however, could not take up that plea. When this case went to the Supreme Court at the earlier stage, it was observed by the learned Judges that if an involuntary transfer took place by inheritance, the successor to the land took the whole bundle of the rights which went with the land including the right of pre-emption. Moreover, the Letters Patent Bench refused to determine the question whether the second vendees had the right to execute the pre-emption decrees after the death of Neki and they held that it was not necessary to go into that matter in those appeals, for the estate of Neki deceased was being represented by Dhara Singh and his two sons, as his legal representatives, and that was in law sufficient representation of him. The second vendees, according to the Bench, could have recourse to any proceedings in regard to which they were advised.

(70) In the above Supreme Court cases, the transfer was of the subject-matter of the suit before the decree was passed. In those

cases, even the decree, after it was made, was transferable and did not suffer from the vice of non-transferability.

(71) In view of what I have said above, those authorities, therefore, were of no assistance to the second vendees.

(72) As, I may say with respect, rightly pointed out by G. R. Jagadisan J. in *K. N. Sampath Mudaliar* v. *Sakunthala Ammal* (21)—

> "A proper and harmonious construction of the two provisions, section 146 and Order 21, rule 16 of the Civil Procedure Code, the one general and the other special, would be that while Order 21, rule 16, applies to a case of a transfer by assignment in writing or by operation of law of an actual existing decree, section 146 would apply to a case where mere rights are transferred before they culminate and merge into a decree, in favour of the transferor. An assignee who falls within the terms of Order 21, rule 16, can only proceed under that provision to work out his rights in respect of the decree, and he cannot circumvent it by resorting to any general provision under the Code.
>
> The word 'decree-holder' in Order 21, rule 16, means the actual decree-holder on the date of the assignment and not a person, who may, after the so-called assignment, get a decree in his favour."

(73) It is noteworthy that in *K. N. Sampath Mudaliar's case* (21) the learned Judge had made these observations relying on the Supreme Court decision in *Jugalkishore Saraf's case* (18).

(74) Seventhly, in the case of a pre-emption decree, the right to execute the same, after the death of the pre-emptor decree-holder, will vest in his *personal legal representatives* by operation of law, because the continuity of the decree-holder will be presumed in his case. The same cannot be said where the rights in the decree are assigned by the decree-holder in favour of third parties, because the decree-holder has no right to transfer a pre-emption decree. The second vendees cannot thus execute the decrees in the instant case. They can, however, obtain possession of the land by filing a separate suit on the basis of the registered sale-deed in their favour.

(21) (1964) 2 M.L.J.

(75) In view of the foregoing, I hold that the second vendees cannot execute the decrees even under the provisions of section 146, Code of Civil Procedure.

(76) In my opinion, the proper remedy for them is to file a separate suit on the basis of the sale-deed in their favour. *Prima facie*, it does appear to be somewhat hard that they are driven to do so, but the law must have its course and if there is no provision in the Code on the basis of which they can derive a right to execute the decrees, they have to be left to adopt that procedure which is available to them under the law, i.e., institute a suit on the basis of their title. There, the question left open by the Letters Patent Bench would *also* be determined.

(77) Let us now examine a few authorities to which reference was made during the course of arguments. The principal subject of discussion was the Bench decision of the Allahabad High Court to which Mahmood, J. was a party in *Ram Sahai's case* (10). There, the pre-emptor's right of pre-emption had already been established by a decree which had become final before the pre-emptors executed the sale-deed. That sale-deed did not transfer the decree but the property, to the proprietary possession of which the pre-emptors decree-holders were entitled, subject only to the payment of the purchase money within time. On the same day, when the sale-deed was executed, the pre-emptors decre-holders filed an application for the execution of the decree and after reciting that they had sold the property included in the decree to Ambika Prasad, prayed that the latter might be allowed to deposit the purchase money and they (the decree-hoders) might be placed in possession, in order that they might make over possession of the property to the new vendee. The Court below accepted the deposit and allowed execution of the decree in the manner prayed. When the matter went in appeal to the Allahabad High Court, at the instance of the vendee, the appeal was dismissed by the learned Judges. In the course of the Bench decision, Mahmood, J. approved of the two earlier decisions given by that Court in *Rajjo* v. *Lalman* (22), and *Sarju Prasad* v. *Jamna Prasad*, which was not reported. In the earlier case, the Court had laid down the principle that when a pre-emptor, in anticipation of the success of his pre-emptive claim transferred the pre-emptional property in any manner inconsistent with the object of the suit for pre-emption, such transfer operated as forfeiture of the pre-emptive right, and the suit for pre-emption must, therefore, be dismissed. In the latter case, it was

(22) I.L.R. (5) All. 180.

held that a decree for pre-emption, being purely personal in its character, could not be transferred so as to entitled the purchaser to execute the decree and thus obtain possession of the pre-emptional property. In the former authority, the transfer had been made by the plaintiff-pre-emptor before his suit was decree and the question was whether the plaintiff pre-emptor, who had himself infringed the right of pre-emption in connection with the property in suit, should be allowed to obtain a decree for pre-emption. In the latter ruling, the person who was seeking to execute the decree was not the pre-emptor decree-holder, but the person to whom the decree had been transferred and the effect of that authority was to uphold the principle, that no decree of Court passed in a suit for pre-emption could be so transferred as to invest the transferee with the right of obtaining possession of the pre-emptional property by executing that decree. During the course of this judgment, Mahmood, J. observed:—

> "That decree-holder, and not Ambika Prashad, is the person who, in the proceedings from which this appeal has arisen, is seeking to obtain possession of the property, and it is of no consequence that the purchase-money was deposited by the latter on behalf of the former. For it is clear that the pre-emptor-decree-holder, and not Ambika Prasad, is the person to whom possession must be delivered in execution of the decree, and that if Ambika Prasad has any valid rights under the sale-deed, he can enforce them only by a separate suit.
>
> This last circumstance distinguishes the present case in principle from the ruling in the case of **Sarju Prasad** v. **Jamna Prasad**. If in the present case Ambika Prasad were the transferee of the pre-emptive decree, seeking by virtue of that decree to obtain possession of the pre-emptional property, we should have disallowed his application for execution. But such is not the case, and the authority referred to does not, therefore, govern this case.
>
> The distinction which we have thus drawn is not merely technical, but is based on fundamental principles of the law of pre-emption. The sole object of the right of pre-emption is the exclusion of such strangers as are objectionable to the pre-emptive co-sharers of the vendor — — — — — — — — — —(part of this portion

has already — — been quoted above) — — and if a decree for pre-emption could be validly transferred, the effect would be to place the transferee in possession without the trial of the question whether such transferee had the pre-emptive right in preference to the vendee against whom the decree was obtained. Nor could the sale of a pre-emptive decree be regarded as giving rise to a fresh cause of action for a separate suit to enforce pre-emption, and it follows that, not only the rights of the vendee-judgment-debtor, but also those of other co-sharers, might be injured by allowing the transferee of a pre-emptive decree to take out execution. On the other hand, in a case like the present, where the pre-emptional property and not the decree has been transferred, the effect of executing the decree can only be to place the pre-emptor decree-holder in possession of the pre-emptional property, and the sale-deed executed by him, if valid, would give rise to a separate cause of action for a pre-emptive suit to be instituted by any person or persons who may consider the sale as having infringed their pre-emptive right. In the present case, whether the sale-deed of the 29th November, 1883, be valid or invalid, it must necessarily remain in abeyance till the pre-emptor-decree-holder obtains possession of the pre-emptional property under the decree; and , under this view, the present case is analogous to one in which the pre-emptor decree-holder, immediately after obtaining possession under the decree, sells the property.

For these reasons, and without prejudice to any rights that may arise out of the sale-deed of the 29th November, 1883, we hold that the Court below was right in allowing the execution of the decree at the instance of the plaintiff-pre-emptor, and we dismiss this appeal with costs."

(78) Learned counsel for the second vendees tried to distinguish **Ram Sahai's case** (10) by submitting that in that case, the sale was made by the pre-emptors-decree-holders before they had deposited the purchase money in Court for being paid to the vendee. The argument raised was that it was only after the purchase money had been deposited in Court that the right of the pre-emptor to the property accrued and he could, thereafter, sell the property to anybody he

liked. The new sale would then be subject to the right of pre-emption.

(79) In my opinion, the distinction pointed out by the learned counsel would have made no difference so far as the decision by Mahmood, J. was concerned. The learned Judge did not decide the case on that basis at all. The line of his reasoning has already been quoted by me above in extenso. It is true that at the time when that decision was given, the Code of Civil Procedure of 1882 was in force and section 214 of that Code was in these terms:—

"214—Suit to enforce right of pre-emption :

When the suit is to enforce a right of pre-emption in respect of a particular sale of property, and the Court finds for the plaintiff, if the amount of purchase money has not been paid into Court, the decree shall specify a date on or before which it shall be so paid, and shall declare that on payment of such purchase money, together with the costs (if any) decree against him, the plaintiff shall obtain possession of the property, but that if such money and costs are not so paid, the suit shall stand dismissed with costs."

(80) This provision was replaced by Order 20, rule 14, in the Code of Civil Procedure of 1908 and the words "whose title thereto shall be deemed to have accrued from the date of such payment" were added. In my opinion, the addition of these words would not make any difference. Even under the old section 214, when the pre-emptor paid the purchase money, as directed by the decree passed in his favour, he became entitled to obtain possession of the property from the vendee, meaning thereby that he got title to the property on the payment of the purchase money. It was only then and on the basis of his title that he was able to claim possession of the property from the vendee. If the pre-emptor failed to pay the purchase money, his suit was to stand dismissed. It could not be argued that previous to the introduction of the provisions of Order 20, rule 14 by the Code of Civil Procedure of 1908, the pre-emptor's title to the property never accrued, because our attention was not invited to any other provision of the old Code of 1882 under which the pre-emptor's title to the property accrued. I am of the opinion that after the compliance with the provisions of section 214 of the old Code, the pre-emptor got a firm title to the

property for which he had brought a suit for pre-emptor. The distinction pointed out by the learned counsel for the second vendees, therefore, in my view, is of no consequence.

(81) According to the decision in **Ram Sahai's case** (10) a vendee from the pre-emptor-decree-holder can obtain possession of the land by filing a separate suit on the basis of the transfer in his favour and not by executing the decree under which the decree-holder obtain the right to the land. It further follows from that decision that if Neki had remained alive after selling the land to the second vendees, he alone, and not the second vendees, would have been entitled to execute the decrees for obtaining possession from the first vendees. After his death, this right to execute the decrees for obtaining possession had devolved on Neki's personal legal representatives, namely, Dhara Singh and his two sons and not on the second vendees. So the second vendees had no right to execute the decrees in order to obtain possession of the land from the first vendees under the pre-emption decrees.

(82) In *Lashkari Mal* vs. *Ishar Singh and another* (15), the facts were that the plaintiff claimed pre-emption of certain property on the ground that the defendant who had obtained a decree for pre-emption of the same property had transferred his decree to his grandson who having paid the decretal price into Court had obtained possession of the Under these circumstances, a Division Bench of the Punjab Chief Court, consisting of Johnstone and Rattigan JJ., held as under :—

> "That as under the provisions of Section 214 of the Civil Procedure Code a pre-emptor's rights to or in the property do not accrue until he complies with the terms of the decree, the sale by the former pre-emptor to his grandson was merely a transfer of the right to obtain the property by compliance with the conditions of the decree and not the property itself. and was therefore not a sale of immovable property subject to the right of pre-emption within the meaning of Section 9 of the Punjab Laws Act."

(83) In *Jowala Sahai and others vs. Ram Rakha* (16). Stogdon and Chatter JJ. approved of the unreported Bench decision of the Allahabad High Court in *Sarju Prasad* vs. *Jamna Prasad*, quoted in *Ram Sahai's case* (10). The said judgment, according to Mahmood, J., held that a decree for pre-emption, being purely personal in character

could not be transferred, so as to entitle the purchaser to execute the same. The person, who was seeking to execute the decree in that case, was not the pre-emptor decree-holder, but the person to whom the decree had been transferred. The effect of that ruling, according to Mahmood, J., was to uphold the principle that no decree of a Court passed in a suit for pre-emption could be so transferred as to invest the transferee with the right of obtaining possession of the pre-emptional property by executing the decree.

(84) In *Ram Singh and others* v. *Gainda Ram and others*, (1). Kapur J. observed:—

> "A transferee from a pre-emptor who has obtained a pre-emption decree and deposited the decretal price, is not a representative of that pre-emptor within the meaning of the word representative as used in section 74 (1) C.P.C. because pre-emption decree is a personal decree."

(85) I wish to make it clear that I have purposely avoided discussing cases, not dealing with pre-emption law, because I do not consider them to be quite relevant for determining the point in controversy. I place pre-emption suits in a class by itself. The reason is simple. In such a suit, the plaintiff-pre-emptor, before getting possession of the property, has first to establish his title to it and that he does only after obtaining a decree for pre-emption and then complying with its terms. After he secures a decree in his favour, he has to deposit the purchase money within a fixed time. On his doing so, he gets two rights — (a) title to the property and (b) right to get its possession from the vendee. Even after obtaining a decree, he may change his mind and refuse to deposit the purchase money within the prescribed period. In that case, his suit will be dismissed and he will not get any rights in the property. Such a situation does not arise in cases of other kinds. There when the plaintiff brings a suit for possession of certain property on the basis of his title, that title to the property, unlike that of a pre-emptor, is already with him. The pre-emptor's title to the property, as I have already said, accrues under Order 20, rule 14, Code of Civil Procedure, on the date when he deposits the purchase money in accordance with the pre-emption decree. Similarly, during the pendency of a pre-emption suit, a pre-emptor cannot transfer the pre-emptional property in any manner inconsistent with the object of the suit for pre-emption. If he does that, he loses his pre-emptive right. Even after the pre-emption

suit is decreed, the decree being personal in character cannot be transferred so as to entitle the purchaser to obtain possession of the property by executing it. Then again, after the title to the property has accrued to the pre-emptor on his complying with the terms of the decree, when he sells the property to another person, the transferee's rights will be determined on the basis of the sale-deed in his favour. If the vendee has been given only the title to the property and not the right to take its possession by executing the pre-emption decree, then he cannot obtain possession by that method. Everything will depend on what actually has been validly transferred by the pre-emptor decree-holder in his favour. All these are the special characteristics of a pre-emption suit and a pre-emption decree and they are not to be found in cases of other kind. It is because of these reasons that I am of the view that other cases are of no assistance in solving the present dispute.

(86) Before parting with the case, I may notice one argument raised by the learned counsel for the first vendees. He submitted that it was not possible to fix the starting point of limitation regarding the suit for pre-emption, if one was to be filed qua the registered sale-deed dated 5th December, 1962, executed by the pre-emptor decree-holder in favour of the second vendees, wherein he had stated that possession had been delivered to the vendees on receipt of the purchase price from them. Admittedly, Article 10 of the old Limitation Act of 1908 would apply to the instant case and the property sold was capable of physical possession, even though as a matter of fact it was in possession of the first vendees when the deed dated 5th December, 1962, was written. The question for decision would be as to when the second vendees took physical possession of the same under the sale, because, according to Article 10, the Limitation of one year for filing the suit for pre-emption would start from that date. According to the averments in the sale-deed, possession was given by the pre-emptor decree-holder on 5th December, 1962, to the second vendees on receipt of the purchase price from them. Factually that statement was incorrect, because in reality the possession was with the first vendees. It was stated at the bar by the learned counsel for the second vendees that they had recently taken possession of the land from the first vendees during the course of the execution proceedings relating to the three pre-emption decrees. How could that possession, which was taken by the second vendees not from their vendor (pre-emptor decree-holder) but from the first vendees and not

under the sale-deed dated 5th December, 1962, but by executing the pre-emption decrees, be said to comply with the requirements of the **terminus-a-quo** as fixed under Article 10?

(87) The argument raised by the learned counsel for the appellants, in my opinion, does require serious consideration. But it is needless for me to decide whether it should succeed or not, because as I look at the matter this point is not necessary to be determined for resolving the controversy arising in the present appeals.

(88) In view of what I have said above, I am of the opinion that in the facts and circumstances of this case, the second vendees cannot get possession of the land in dispute by executing the pre-emption decrees.

(89) The result is that the appeals are accepted and the judgments of the Courts below are set aside. In the peculiar circumstances of this case, however, the parties are left to bear their own costs throughout.

SODHI, J.—I have had the privilege and benefit of going through the judgment of my learned brethren D. K. Mahajan and P. C. Pandit, JJ. The facts have been stated very elaborately by both of them and it is pointless to recapitulate the same. It is equally unnecessary for me to refer to the various rulings cited at the bar.

(91) The sole question arising for determination as formulated by D. K. Mahajan, J., is:—

> "Whether the purchaser of land from a pre-emptor, of which the pre-emptor has become the owner in pursuance of a pre-emption decree after complying with the provisions of Order XX, rule 14, Civil Procedure Code, could execute the decree in order to obtain possession of the land purchased by him?"

Suffice it to state that when a decree in any suit has been passed, it is normall only the decree-holder who can execute the decree. The expression "decree-holder" has been defined in section 2(3) of the Code of Civil Procedure and means "any person in whose favour a decree has been passed or an order capable of execution has been made". "A decree can also be transferred and the transferee can as well execute it when the transfer is by assignment in writing or by operation of law. As for instance, in the case of a deceased decree-holder, his legal representatives to whom the decree stands transferred

by operation of law, can also execute the decree. There are several other modes of transfer by operation of law but no reference to them is necessary for the purposes of the present case. Order XXI rule 16, of the Code of Civil Procedure, is relevant in this regard and may be quoted in extenso :—

> "16. Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder :
>
> Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:
>
> Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others."

(92) In the case before us, we have looked into the terms of the sale-deed executed in favour of the second transferee, and it does not purport to effect a sale of the decree but transfers the land only. It is not possible to agree with the learned counsel for the appellants and to hold that the sale, though purporting to be of the land, is also of the decree. If once it is held that the sale is of the decree, the provisions of Order XXI rule 16 are attracted which necessitates certain procedures to be followed, and it is conceded before us that it was not so done. I however agree with his contention that a pre-emption decree, which, beyond any manner of doubt, is a personal decree, can not be transferred so as to enable the transferee to execute the same. A right to pre-empt whether based on Mohammadan law, custom or a statute, depends on a pre-emptor possessing certain personal qualifications. It is inconceivable that just by transferring the decree, the pre-emptor decree-holder can substitute the transferee in his place and confer on him those personal qualifications which are basis of the right to pre-empt. In Punjab, the Punjab Pre-Emption Act, 1913 (hereinafter called the Act), as

amended up-to-date, is in force and sections 15 and 16 thereof give the classes of persons in whom right to pre-empt vests in respect of sales of agricultural land and village immovable property or of urban immoveable. These provisions of law are reproduced below for facility of reference :—

"15. (1) The right of pre-emption in respect of agricultural land and village immovable property shall vest—

(a) where the sale is by a sole owner,—

FIRST, in the son or daughter or son's son or daughter's son of the vendor;

SECONDLY, in the brother or brother's son of the vendor;

THIRDLY, in the father's brother or father's brother's son of the vendor;

FOURTHLY, in the tenant who holds under tenancy of the vendor the land or property sold or a part thereof;

(b) where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly, —

FIRST, in the sons or daughters or sons' sons or daughters' sons of the vendor or vendors;

SECONDLY, in the brothers or brother's sons of the vendor or vendors;

THIRDLY, in the father's brothers or father's brother's sons of the vendor or vendors;

FOURTHLY, in the other co-sharers;

FIFTHLY, in the tenants who hold under tenancy of the vendor or vendors the land or property sold or a part thereof ;

(c) where the sale is of land or property owned jointly and is made by all the co-sharers jointly,—

FIRST, in the sons or daughters or sons' sons or daughters' sons of the vendors ;

SECONDLY in the brothers or brothers' sons of the vendors;

THIRDLY, in the father's brother's or father's brother's sons of the vendors ;

FOURTHLY, in the tenants who hold under tenancy of the vendors or any one of them the land or property sold or a part thereof.

(2) Notwithstanding anything contained in sub-section (1),—

(a) Where the sale is by a female of land or property to which she has succeeded through her father or brother or the sale in respect of such land or property is by the son or daughter of such female after inheritance, the right of pre-emption shall vest,—

(i) if the sale is by such female, in her brother or brother's son ;

(ii) if the sale is by the son or daughter of such female, in the mother's brothers or the mother's brother's sons of the vendor or vendors ;

(b) where the sale is by a female of land or property to which she has succeeded through her husband, or through her son in case the sons has inherited the land or property sold from his father, the right of pre-emption shall vest,—

FIRST, in the son or daughter of such husband of the female ;

SECONDLY, in the husband's brother or husband's brother's son of such female.

16. The right of pre-emption in respect of urban immovable property shall vest in the tenant who holds under tenancy of the vendor the property sold or apart thereof."

(93) To hold that a transferee of a pre-emption decree gets a right to execute a decree and obtain possession of the property, no matter he is an utter stranger and not possessed of the qualifications as required by the aforesaid two sections, will be contrary to the scheme and object of the law of pre-emption. The language of Order XXI rule 16 does not, of course, lay down any fetters on the right to transfer a decree and if the language of this provision alone were to be kept in view, there should be no bar to the transfer of a decree for the restitution of conjugal rights. To my mind, it makes no difference whether the pre-emptor in a pre-emption suit deposits the purchase money as enjoined in the decree passed under Order XX rule 14, Code of Civil Procedure, and acquires title to the land before he transfers the decree. A right to the title of the land and a right to transfer a pre-emption decree so as to entitle the transferee to execute it are two distinct matters and one cannot be confused with the

other. The question before us is a very short one, namely, whether the transferee should be permitted to execute the pre-emption decree on the basis of the transfer made in his favour. I am in most respectful agreement with the view of law taken in *Mehr Khan and Shah Din* v. *Ghulam Rasul and others* (2), and the observations made by Mehmood, J. in *Ram Sahai* v. *Gaya and others* (10), on which reliance has been placed by my brother P.C. Pandit, J. There was no such question about the transfer of a decree before their Lordships of the Supreme Court in *Hazari and others* v. *Neki* (4), wherein it has been held that when involuntary transfer takes place by inheritance, the successor to the land takes the whole bundle of the rights which go with the land including the right of pre-emption. What is intended to be laid down is only this much that when a plaintiff pre-emptor in a pre-emption suit, who has deposited the necessary purchase money in terms of Order XX rule 14, and acquired a title to the land, has heirs and legal representatives on whom the property devolves by inheritance, the latter are entitled to continue the appeal in which the decree had been passed, if the pre-emptor dies during the pendency of that appeal. In my opinion, because of this decision of their Lordships of the Supreme Court, it cannot be held that a pre-emption decree has ceased to be a personal decree in all respects and becomes transferable as any other decree so as to clothe the transferee with a right to execute the same.

(94) If a pre-emption decree is held not to be transferable and the transferee cannot execute the same under Order XXI rule 16, a question then arises whether the same result can be achieved by the plaintiff decree-holder who could have transferred the decree, but chooses only to transfer the land. I cannot visualise that section 146 of the Code of Civil Procedure permits any such course. The Supreme Court has held in *Jugalkishore Saraf* v. *M/s Raw Cotton Co. Ltd.* (18), that section 146 must be given a wider meaning and that a person who is transferee of the debt for the recovery of which a suit has been instituted, becomes the real owner of the decree when it is passed, and is in law deemed to be person claiming under the decree-holder, so as to have a right to execute that decree in which he alone has the real interest. It is an extension of the equitable doctrine that a man who contracts to transfer any interest or property which has not yet come into existence must in equity be treated to be intending to transfer that interest or property when it really comes. Such an equitable doctrine as enunciated by

their Lordships cannot apply to transfer of every subject matter of a suit, irrespective of the nature of the right involved therein, thereby giving a right to the transferee to execute a decree that may eventually be passed or has already been passed. Each case will depend upon its own facts and circumstances. For instance, can it ever be said with any reasonableness that in a suit for maintenance by a wife, the right to further maintenance can be transferred or in a suit for conjugal rights the parties can transfer their respective rights. There are certain rights which are inherently not transferable because of their nature and the case before their Lordships of the Supreme Court was only that of a right to recover a debt. Section 146, Code of Civil Procedure, itself lays down limitations on a transferee in the matter of executing a decree. The transfer must be such which does not come in conflict with any other provision in the Code of Civil Procedure and is not prohibited by any law for the time being in force. In other words, the general enabling provision as contained in section 146 must give way to special provisions relating to the same subject matter or to any other provision which prohibits the transfer. Section 146 cannot also come into operation when a decree has been passed and could be transferred, but has not, in fact, been transferred. After the passing of the decree, the only relevant provision directly relating to the question of transfer is the special one as given in Order XXI rule 16 and a transfer must be under that provision of law only if a decree is sought to be executed by one other than the decree-holder. Section 146 cannot be pressed into service at such a stage. I am in full agreement with the reasoning in the Single Bench judgment of Madras High Court reported as *K. N. Sampath Mudaliar* v. *Sakunthala Ammal* (21). Since I am of the view that a transferee of a pre-emption decree cannot execute the decree, the transfer of the subject matter of the pre-emption suit cannot be held to give a better right to the transferee so as enable him to execute the decree.

(95) The contention of the learned counsel for the respondents second vendees is that the sale of the land in such circumstances can be pre-empted by any person having a legal right to do so under the Act and that there is no circumvention of any law of pre-emption by allowing transferee of the land, during the pendency of the appeal, to execute the decree. I am again in agreement with my brother Pandit J. that this contention is wholly irrelevant for the purpose of answering the question referred to us. What we are concerned with is as to

whether the transferee of land, in respect of which a pre-emption decree has been passed, can execute a decree as such under section 146 or under Order XXI rule 16, Code of Civil Procedure. Whatever be the rights of any person, arising out of a sale, can be enforced in a Court of law by a separate suit, where defences available to the respective parties can be taken. In my opinion, it is doubtful if a remedy by way of suit for pre-emption in such a situation when after the passing of the decree for pre-emption appeals are still pending and rights are in a fluid state, is available to the person entitled to pre-empt the second sale. No doubt by depositing the purchase money the plaintiff pre-emptor acquires the title to the land which he can transfer but pre-emptor must have *terminus a quo* from which period of limitation for instituting a pre-emption suit can be reckoned. The provisions of law regarding limitation are contained in section 30 of the Act and Article 10 of the Indian Limitation Act, 1908, which Article now stands replaced by Article 97 of the Indian Limitation Act, 1963 (36 of 1963). As regards this provision, there is no difference of language in the earlier and the latter Acts. Section 30 of the Act reads as under:—

> "30. In any case not provided for by article 10 of the Second Schedule of the Indian Limitation Act, 1908, the period of limitation in a suit to enforce a right of pre-emption under the provisions of this Act shall, notwithstanding anything in article 120 of the said schedule, by one year—
>
> (1) in the case of a sale of agricultural land or of village immovable property;
>
> from the date of the attestation (if any) of the sale by a Revenue Officer having jurisdiction in the register of mutation maintained under the Punjab Land Revenue Act, 1887, or
>
> from the date on which the vendee takes under the sale physical possession of any part of such land or property;
>
> whichever date shall be the earlier;
>
> (2) in the case of a foreclosure of the right to redeem village immovable property or urban immovable property;
>
> from the date on which the title of the mortgagee to the property become absolute;

(3) in the case of a sale of urban immovable property, from the date on which the vendee takes under the sale physical possession of any part of the property."

(96) Article 97 of the Limitation Act, 1963, is as under:—

Description of suit	*Period of limitation*	*Time from which period begins to run*
97. To enforce a right of pre-emption whether the right is founded on law or general usage or on special contract.	One year	When the purchaser takes under the sale sought to be impeached, physical possession of the whole or part of the property sold, or where the subject *matter of the sale does not admit of physical possession of the whole or part of the property, when the instrument of sale is registered."

A bare reading of these provisions will show that when the vendor is not in actual physical possession of the suit property, the time will commence to run from the date the purchaser takes physical possession of the whole of the property sold under the sale sought to be impeached. The only question debated before us was to whether the purchaser of the suit land can be said to have taken possession under the sale when he takes such possession after executing the decree by virture of section 146, Civil Procedure Code. Assuming that the transferee of the suit land can execute the decree, can it be said that when he takes the possession he takes it under the sale. He takes possession by execution of the decree either because he is transferee of the decree or is deemed to be such a transferee by operation of section 146, Civil Procedure Code. It then is not a possession under the sale within the meaning of section 30 of the Act or Article 97 of the Indian Limitation Act, 1963.

(97) After giving my careful thought to the matter, I am in full agreement with the reasoning and conclusions of my learned brother Pandit J. and hold that it is not open to the second vendees to get possession of the land in dispute by executing the decrees. They can, of course, file a separate suit which is not barred under section 47, Code of Civil Procedure. The appeals must, therefore, be

allowed and the judgments of the Courts below set aside. I also agree with Pandit J. that, in the peculiar circumstances of the case, the parties must be left to bear their own costs throughout.

ORDER OF THE COURT.

(98) In view of the majority decision, Execution Second Appeals Nos. 1131, 1132 and 1133 of 1968 are allowed and the decisions of the Courts below are set aside. The Execution Applications filed by the purchaser from the pre-emptor are dismissed. The parties are left to bear their own costs throughout.

K.S.K.

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