

seeking to execute any other kind of decree, and I am therefore of the opinion that although in the most technical sense an application for passing a final decree may not be an execution application it must be deemed to fall within the term "application for execution" as used in section 15 of the Limitation Act, or in other words, this term is not used in its most technical sense in the section.

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For these reasons, I am of the opinion that the present appeal must fail and I would accordingly dismiss it, but taking into consideration the points involved I would leave the parties to bear their own costs.

CHOPRA, J.—I, agree

Chopra J.

R.S.

APPELLATE CIVIL.

Before D. K. Mahajan, J.

RAM SINGH AND OTHERS,—Appellants.

versus

GURNAM SINGH,—Respondent.

Regular Second Appeal No. 510 of 1958.

Pre-emption—Nature of the right—Vendee, whether can defeat the pre-emptor by exchanging a part of the property with another person having a better or equal status with the pre-emptor.

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Held, that the right of pre-emption is a right of substitution. The decree in a suit for pre-emption substitutes the pre-emptor in the place of the vendee in a transaction of sale. The effect of such a decree is as if the name of the vendee is rubbed out of the sale-deed and that of the pre-emptor is substituted in its place.

Held, that the property acquired by exchange is substituted for the property given in exchange. In other

words in the instant case the property acquired by exchange in lieu of part of the property purchased by the vendee will form part of the property acquired under the sale. What is being pre-empted is the sale, what forms part of the sale will pass on to the pre-emptor on his obtaining the pre-emption decree. The position here is in no way better than in the case of a person who acquired by two sale deeds property in a village. Both these sales are pre-empted by a person having a superior right of pre-emption by two separate suits. But the vendee sets up the sale in the other suit and *vice versa* in defence on the ground that by reason of that sale he holds an equal status with the pre-emptor. This defence will be of no avail and the pre-emptor will succeed, the property on the basis of which the defence is based being itself in jeopardy. A vendee can, however, defeat a pre-emptor by all legitimate means. The modes usually adopted are either by transferring the entire bargain to a person having equal or better qualifications for pre-emption to those of the pre-emptor or by the vendee acquiring an equal or better qualification than that possessed by the pre-emptor. By the device adopted in the present case, it cannot be said that either one or the other of the modes has been adopted. It is inconceivable that the vendee can acquire a better status by the very transaction, which is the subject-matter of a suit for pre-emption. The bargain cannot be split up by the vendee for his own benefit, and the pre-emptor's suit for pre-emption cannot be defeated by adopting the device of exchanging a part of the land sold with another person having a better or equal status with the pre-emptor, because what he acquired by exchange forms part of the pre-empted property and as such does not confer any right on him equal or superior to that of the pre-emptor.

[*Note*.—Letters Patent Appeals No. 407 to 409 of 1959 filed against this judgment were dismissed in limine by Hon'ble the Chief Justice and Tek Chand, J., on 9th December, 1959, and application for leave to appeal to the Supreme Court S.C.A. No. 390 to 392 of 1959, were dismissed on 7th January, 1960.]

Second appeal from the decree of the Court of Shri H. S. Bhandari, Additional District Judge, Ferozepore, dated the 23rd day of May, 1958, reversing that of Shri Om

Parkash Senior Sub-Judge Ferozepore, Camp Muktsar, dated the 20th February, 1958, and dismissing the plaintiffs' suit and leaving the parties to bear their own costs throughout.

H. S. GUJRAL, for Appellant.

G. C. MITTAL, for Respondent.

JUDGMENT

MAHAJAN, J.—This order will dispose of R.S. As Nos. 510, 511 and 512 of 1958. Mahajan, J.

On the 31st of May, 1956, Aftab Rai, by means of four sale deeds, sold four pieces of agricultural land, the details of which are set out hereunder:—

	Kanals	Marlas	Ta whom sold	Sale Price	
				Rs.	No.
1.	36	00.	Gurdev Singh	2400.	00.
2.	157	05.	Gurnam Singh	10000.	00.
3.	158	01.	Mehar Singh and Gurcharn Singh	10000.	00.
4.	174	17.	Amir Singh	10000.	00.

The three sales to Gurnam Singh, Mehar Singh and another and Amir Singh were pre-empted by Gurdev Singh, Ram Singh and Jodh Singh. The suits were filed on the 29th of May 1957. Before the institution of the suits, the respective vendees transferred by exchange about two Kanals out of the land purchased, which is the subject matter of the suits for pre-emption, with persons who are owners in the village and in lieu thereof got a little less than two Kanals of land. The defence set up to the suits was that by reason of the aforesaid exchanges, the defendants had acquired equal status with the pre-emptors and thus the suits for pre-emption were liable to fail as the pre-emptors'

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status had ceased to be superior to that of the defendant vendees. The trial Court decreed all the suits as it came to the conclusion that there was no exchange in fact. On appeal by the defendant vendees, the learned Additional District Judge after admitting additional evidence held that the exchanges in question were valid exchanges and therefore the defendant vendees had acquired equal status with that of the pre-emptors with the result that the suits for pre-emption would fail. He accordingly allowed the appeals and dismissed the suits. Dissatisfied with this decision, the pre-emptors have preferred the present second appeals to this Court.

The contention of Mr. Faqir Chand Mital, the learned counsel for the appellants in R.S.A. No. 511 of 1958 which has been adopted by Mr. H. S. Gujral in R.S.A. Nos. 510 and 512 of 1958, is that by exchanging part of the property sold, a vendee cannot be held to have acquired a better or equal status with the pre-emptors' because what he acquires by exchange forms part of the pre-empted property and as such does not confer any right equal or superior to that of the pre-emptor.

After hearing the learned counsel for the parties I am of the view that the contention of the learned counsel is sound. It is well settled that the right of pre-emption is a right of substitution. The decree in a suit for pre-emption substitutes the pre-emptor in the place of the vendee in a transaction of sale. It has been said more often than once that the effect of such a decree is as if the name of the vendee is rubbed out of the sale deed and that of the pre-emptor is substituted in its place. The question that arises for determination in the present case is what is the effect if part of the property sold, which is the subject-matter of the suit for pre-emption, is exchanged, the object of the exchange

being to defeat the pre-emptors' suit on the plea that by reason of the exchange the vendee has acquired an equal status with the pre-emptor. It is elementary that the property acquired by exchange is substituted for the property given in exchange. In other words in the instant case the property acquired by exchange in lieu of part of the property purchased by the vendee will form part of the property acquired under the sale. What is being pre-empted is the sale. What forms part of the sale will pass on to the pre-emptor on his obtaining the pre-emption decree. The position here is in no way better than in the case of a person who acquires by two sale deeds property in a village. Both these sales are pre-empted by a person having a superior right of pre-emption by two separate suits. But the vendee sets up the sale in the other suit and *vice versa in* defence on the ground that by reason of that sale he holds an equal status with the pre-emptor. This defence will be of no avail and the pre-emptor will succeed, the property on the basis of which the defence is based being itself in jeopardy. The reported decisions on which Mr. Gokal Chand Mital relies in support of his contention, namely that by obtaining by exchange property in the village, the vendee acquires equal status with the pre-emptor and thus can defeat the pre-emptor are all distinguishable. In those cases the land exchanged did not form part of the land sold and pre-empted. The exchange which clothed the vendee with an equal status was an independent transaction. The suit for pre-emption did not and could not wipe it out. No authority bearing on the point has been cited at the bar by the learned counsel for the respondents. It is also well settled that a vendee can defeat a pre-emptor by all legitimate means. The modes usually adopted are either by transferring the entire bargain to a person having equal or better qualifications for

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pre-emption to those of the pre-emptor or by the vendee acquiring an equal or better qualification than possessed by the pre-emptor. By the device adopted in the present case, it cannot be said that either one or the other of the modes has been adopted. It is inconceivable that the vendee can acquire a better status by the very transaction, which is the subject matter of a suit for pre-emption. The bargain cannot be split up by the vendee for his own benefit.

After giving the matter my careful consideration and after viewing it in all its aspects, I am firmly of the view that by the device adopted by the vendee in the present case, the plaintiffs' suit for pre-emption cannot be defeated.

For the reasons given above, the appeals preferred by the pre-emptors are allowed, the judgments and the decrees of the Additional District Judge are set aside and plaintiffs' suits are decreed.

In view of the fact that this matter was not so argued before the Additional District Judge, I leave the parties to bear their own costs throughout.

B.R.T.

APPELLATE CIVIL

Before K. L. Gosain and Harbans Singh, JJ.

HANS RAJ AND ANOTHER,—Appellants.

versus

BHUPINDER SINGH AND OTHERS,—Respondents

Regular First Appeal No: 134 of 1953.

1959
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Cis-Sutlej Jagirs—Terms and conditions on which granted—Rights of the Jagirdar for the time being—Properties forming part of the Jagirs—Whether liable to attachment or sale.