

District Magistrate cannot be questioned by this Court inasmuch as it was a purely ministerial proceeding and in no sense judicial. At the same time we are inclined to agree with Ayling, J., that S. 22 bars the jurisdiction of the Courts as regards all proceedings purporting to be taken under the Act except declarations of forfeiture under Ss. 4, 6, 9, 11 or 12, as regards which S. 17 provides that any person having an interest in the property in question may apply within two months from the date of the forfeiture order to the High Court to set aside such order on the ground specified in the section.

We accordingly hold that this application cannot be entertained by this Court and we accordingly reject it.

R.M./R.K. *Petition rejected.*

**A. I. R. 1918 Lahore. 220 (1)**

SHAH DIN, J.

*Ramsukh Das*—Plaintiff—Appellant.

v.

*Gulam Muhammad and others*—Defendants—Respondents.

Second Appeal No. 2674 of 1917, Decided on 6th April 1918, from the order of Dist. Judge, Ferozepore, D/- 27th June 1917.

Civil P. C. (1908), O. 7, R. 6—Amendment of plaintiff to state grounds of exemptions from law of Limitation should be allowed.

The provisions of O. 7, R. 6, should be construed in a reasonable and liberal spirit, and save under very exceptional circumstances, the Court of first instance should allow the plaintiff to amend his plaint so as to state the ground of exemption from the law of limitation as required by that rule: 31 Cal 195 and A. I. R. 1914 Lah. 337, Dist. [P 220 C 2]

*Tek Chand and Lal Chand Mehra*—for Appellant.

*Mahammad Sharif for Ghulam Muhammad*—for Respondents.

**Judgment.**—The facts are fully stated in the judgment of the District Judge. I agree with him that upon a strict interpretation of O. 7, R. 6, Civil P. C., read with S. 4, Lim. Act, the plaintiff, Lala Ramsukh Das, should have stated in his plaint, which was filed after the expiry of the period of limitation prescribed by Art. 10, Sch. 1, Limitation Act, the ground upon which he claimed exemption from the operation of the said article. But it seems to me that a very strict interpretation of the above-mentioned provisions of the Civil Procedure Code may lead to anomalous consequences hardly contemplated by the legislature, and,

therefore, they should be construed in a reasonable and liberal spirit; and save under very exceptional circumstances, the Court of first instance should allow the plaintiff, to amend his plaint so as to state the ground of exemption from the law of limitation as required by R. 6, O. 7, Civil P. C. The principle laid down in *Jogeshwar Roy v. Raj Narain Mitter* (1) and *Gebinda Mal v. Santa* (2) is perfectly sound, but the facts of those cases are very different from those of the present case, and the application of O. 7, R. 6, Civil P. C., did not entail a hardship there to the same extent as it would in a case like the present. As pointed out in the case of *Gangadhar Sarkar v. Khawja Abdul Ajij* (3), the head-note of the case reported as *Jogeshwar Roy v. Raj Narain Mitter* (1) is misleading. There may be many circumstances under which a plaintiff who has failed to observe the provisions of R. 6 of O. 7, aforesaid might very properly be allowed to amend his plaint and show the ground of exemption claimed by him from the law of limitation.

I accept this appeal, set aside the judgment and decree of the District Judge, and direct that the plaintiff Lala Ramsukh Das be permitted, on such terms as to costs as the Court may think fit to impose, to amend his plaint so as to comply with the provisions of O. 7, R. 6, Civil P. C. The case is remanded to the Senior Subordinate Judge, Ferozspor, who will restore the suit to its original number in the register of suits and deal with it according to law. The plaintiff, Lala Ramsukh Das, will pay the costs in this Court. Pleader's fee Rs. 32.

R.M./R.K. *Appeal accepted.*

1. (1904) 31 Cal 195.

2. A. I. R. 1914 Lah 337=83 P R 1914=26 I C 441.

3. (1909) 2 I C 77.

**A. I. R. 1918 Lahore 220 (2)**

SCOTT-SMITH, J.

*Imami*—Plaintiff—Appellant.

v.

*Allah Diya and others*—Defendants—Respondents.

Second Appeal No. 1462 of 1916, decided on 12th June 1917.

**Pre-emption—Resale to vendor before suit for pre-emption—Right of pre-emption is not defeated.**

A claim to pre-emption cannot be defeated by the re-sale of the property to the original vendor even though the resale takes place before a suit

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for pre-emption is instituted: 135 P. W. R. 1908; *Fell*: 29 All 125, *Diss from*. [P 221 C 2]

*Durga Das*—for Appellant.  
*Muhammad Iqbal and Badr-ud-Din Kureshi*—for Respondents.

**Judgment.**—The facts of the case out of which the present appeal has arisen are as follows: on 23rd July 1914 Muhammad Idris, defendant 2, sold a house in Ambala City to Allah Diya, defendant 1, for Rs. 300. On 10th August 1914 Allah Diya re-sold it to Sharif Hussain, defendant 3, the minor son of Muhammad Idris the original vendor. The plaintiff brought a suit for pre-emption as regards the original sale in favour of Allah Diya. The first Court gave him a decree for pre-emption on payment of Rs. 300. Upon appeal the District Judge held that the sale to Sharif Hussain was benami, the real vendee being his father Muhammad Idris, original vendor of the house. In other words, the sale was really a re-purchase by the vendor which, in the opinion of the District Judge, he was perfectly entitled to make in order to defeat the pre-emptor. The original vendor is said to have a right of pre-emption by a reason of vicinage. The District Judge relying upon *Liakat Husain v. Rashid-ud-Din* (1) held that plaintiff's claim to pre-emption must fail as he had no better right than Muhammad Idris, the original vendor.

The plaintiff had filed a second appeal to this Court. The point as stated by the admitting Judge is whether there was any legal bar to the original owner and the vendor defeating the would-be pre-emptor by purchasing the house from his vendee prior to suit and taking his stand on the plea that he, the original owner and new vendee, owns the adjoining house. The ruling relied upon by the lower appellate Court reported as *Liakat Husain v. Rashid-ud-Din* (1) is no doubt against the plaintiff, but the previous decisions of this Court are in support of the proposition that such a re-sale cannot defeat the pre-emptor's rights. The matter was fully discussed in Civil Appeal No 886 of 1902, which is reported as *Lachhu v. Maheshu* (2). There it was held that whenever a pre-emptor sues for pre-emption upon a sale and it is found that before his suit the vendee has transferred the property to a

third party, the test is whether the pre-emptor has a superior right of pre-emption in regard to the first sale as compared with the transferee, and that where it is re-conveyed to the original vendor, the pre-emptor must succeed as the former cannot have any right of pre-emption whatever in regard to the sale which he himself made. In that case the Division Bench followed the case reported as *Kahna v. Dewa Sing* (3) and *Shiv Charn Singh v. Secretary of State*, (4), and in Civil appeal No. 493 of 1908 reported as *Sukha v. Arura Mal* (5) a single Judge of this Court took the same view and refused to follow *Liakat Husain v. Rashid-ud-Din* (1). I agree with the decisions of this Court and following them hold that the plaintiff was entitled to a decree and that his claim cannot be defeated by the re sale of the property to the original vendor, even though that re-sale took place before the present suit was instituted. In the lower appellate Court the plaintiff filed cross-objections as to the price fixed by the first Court. The price entered in the sale-deed was Rs. 300, but the first Court found that Rs. 100 out of that was fictitious and that only Rs. 200 was the price actually fixed. I agree with that finding and I, therefore, accept the appeal and give the plaintiff a decree for possession by pre-emption of the house in dispute on payment of Rs. 200. If plaintiff has not already deposited in Court the sum fixed, he should deposit it within two months of this date. On his failing to do so the suit will stand dismissed with costs. If he pays in the money as ordered, his costs in all the Courts shall be paid by the defendants.

R.M./R.K.

*Appeal allowed.*

3. (1879) 62 P R 1829.

4. (1888) 80 P R 1888.

5. (1908) 135 P W R 1908.

**A. I. R. 1918 Lahore 221**

BROADWAY, J.

*Amar Nath and another*—Plaintiffs—  
Appellants.

v.

*Raghpat Rai*—Defendant—Respondent.

Second Appeal No. 2137 of 1916, Decided on 20th June 1917, from decree of Dist. Judge, Jullundur, D/- 16th February 1916.

Guardians and Wards Act (8 of 1890), S. 41 (4)—Order of discharge of guardian

1. (1907) 29 All 125.

2. (1908) 134 P W R 1908.