

**Bhonra Vs. Shivram**

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**Court :** Rajasthan

**Decided On :** Sep-18-1950

**Reported in :** AIR1951Raj22

**Judge :** Dave and; Sharma, JJ.

**Acts :** Alwar State Pre-emption Act, 1946 - Sections 30 and 31(2); Limitation Act, 1908 - Sections 29

**Appeal No. :** Appeal No. 363 of 1949

**Appellant :** Bhonra

**Respondent :** Shivram

**Advocate for Def. :** Inderlal, Adv.

**Advocate for Pet/Ap. :** Umadutia, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**Dave, J.**

1. This is an appeal by the defendant against the order of the District Judge, Alwar, dated 5-4-1949 getting aside the decree of the Munsif, Alwar, dated 18 9-1948 and remanding the case for trial of other issues.

2. On 11-1-1947 the plaintiff-respondent 1 Shivram brought a suit for pre-emption in respect of the property sold by respondents 2 and 3, Lalluram and Balabux to the appellant by a sale-deed dated 12-2-1946. The suit was thus well within one year of the date of sale according to Article 10, Alwar State Limitation Act, which was the same as Article 10, Indian Limitation Act. The respondent, however, pleaded that the suit was barred on account of the provisions of Section 31(2), Alwar State Pre-emption Act, [VII] 7 of 1946. The trial Court allowed this objection and dismissed the suit. The District Judge has set aside that order and remanded the case for the trial of the remaining issues. The only point for our determination, therefore, at present is that of limitation.

3. The appellant's advocate contends that the way in which the District Judge has interpreted Section 31 (2) is incorrect. The said Section 31 runs as follows:

'31 (1) Where any claim for pre-emption in this State was rejected, whether by an original Court or a higher Court, after the 30th day of April 1942 on the ground that there was no law or custom under which the pre-emption in question could be claimed, then such a claim, if consistent with the provisions of this Act, shall be restored to file and decided according to this law, if an application to that effect is made by such claimant or his lineal heir-at-law within three months next after the passing of this Act, inspite of the lapse of ordinary period of limitation:

Provided that the pre-emptor, in addition to the price payable under this Act for such right, shall also pay for the net costs of improvements effected bona fide by the transferee or his successor, upon the property liable to pre-emption, before the passing of this Act, and which is not detachable or removable without material alteration in or damage to the pre-emptible property:

Provided further that a suit which was rejected as barred under Article 10, Alwar State Limitation Act, 1944 shall not be revived under this section.

(2) Suits relating to pre-emption which were not filed after the 30th day of April 1942 shall be entertained if instituted within three months next after the passing of this Act inspite of the lapse of the ordinary period of limitation.'

4. In order to understand the correct import of the above section it seems necessary to give a brief history of the law of pre-emption in the former Alwar State as related by the appellant's counsel in the Court. The respondent's advocate has admitted it to be correct. It was pointed out that before April 1942 there was a customary right of pre-emption prevalent in the Alwar State and that it was recognized by the Court and there were several decisions to that effect. On 30-4-1942 it was observed in a case b(sic) the then High Court of Alwar State that there was no law or custom under which the pre-emption could be claimed and, therefore, all pre-emption suits were dismissed thereafter. On 28-6-1946 the present Pre-emption Act No. VII was, therefore, brought into force and the right of pre-emption was thereby recognized with retrospective effect, that is from 30-4-1942.

5. It has been conceded by the appellant's learned advocate that respondent 1 had thus a right of pre-emption according to this Act although it was enacted after the date of sale. He, however, argues that according to Section 31 (2) respondent 1 should have filed the suit within three months and that the ordinary period of one year's limitation was not available to him. I have given careful thought to the argument of the learned advocate of the appellant, but I find it hard to accept it. It is admitted by him that Article 10, Alwar State Limitation Act, had continued to remain in force in Alwar even after the judgment of the High Court referred to above. In Section 30 of the present Act also, the same period of one year was provided, for cases not covered by Article 10. Thus, for all those suits which came within the purview of Article 10 and Section 30 the ordinary period of limitation was that of one year at the date of suit. It is clear from the language of Section 31 that this section was provided to extend the period of limitation for those persons who had suffered or who would otherwise have suffered on account of the above mentioned decision of the Alwar High Court. Section 31, Clause (1) provided that if any claim for pre-emption was rejected by any Court after 30-4-1942 on the ground that there was no law or custom of pre-emption in Alwar State and if the claim was consistent with the provisions of this Act it should be restored to file if an application to that effect be made by the claimant or his lineal heir-at-law within three months from the passing of this Act although the ordinary period of limitation might have lapsed. This right was subject to two provisions which are not relevant

for our present purpose.

6. Similarly for those suits which were not filed after 30-4-1942 and which had become time barred on account of ordinary period of limitation it was provided in Sub-clause (2) that they should be entertained if instituted within three months of the passing of this Act.

7. The appellant's learned advocate wants this Court to hold that this period of three months was provided for all the suits in which the cause of action had arisen before the enforcement of the present Act even though the ordinary period of limitation had not expired. He has referred to Sections 3 and 29, Alwar State Limitation Act, and argued that because of this specific provision of law the period prescribed in Schedule 1, Alwar State Limitation Act, could not be applicable to such cases. His argument is correct to the extent that if a period of limitation different from that prescribed in Schedule 1, Indian Limitation Act, is provided in any special or local law the provisions of Section 3 should be applied as if such period were prescribed in that schedule, but his contention that a special period was prescribed for a suit like the present one in the present Pre-emption Act is not correct. It is nowhere provided expressly or impliedly in this Act that for all suits arising out of sales made before the enforcement of this Act only three months period would be allowed. It is a well-recognized principle of law that the Courts cannot import a period of limitation unless it is provided by some law. It was remarked by Broadway J., in *Asa Ram v. Darba Mal*, A.I.R., (16) 1929 Lah. 513: (121 I. O. 379) (Shadi Lal C.J. concurring) that Limitation Act has to be strictly construed and unless a suit clearly falls within the ambit of the article sought to be applied the decision should be in favour of the continuation of the suit. I respectfully agree with this observation. Therefore, once it is conceded that the right of pre-emption was recognized retrospectively from 30-4-1942 then unless the enforcement of that right is clearly barred by statute the Courts cannot refuse to grant it on the ground of limitation, I do not mean to invoke any equitable consideration for the respondent and if the bar of limitation were clear I would have had no hesitation in allowing it howsoever harsh it might have been. But the words 'if instituted within three months next after the passing of this Act' cannot be separated from 'in spite of the lapse of ordinary period of limitation.' The

appellant's learned advocate wants to apply this section to the present case as if the words 'inspite of the lapse of the ordinary period of limitation' were not occurring therein. By no stretch of imagination can these last words be applied to the present case and, therefore, to me it is crystal clear that this is only an enabling section meant to provide further limitation to those suits which otherwise would have become time barred by the ordinary law. Except Section 30 (31 ?) there is no provision in this Act which curtails the ordinary period of limitation and, therefore, the appellant's contention cannot stand. The decision of the learned District Judge appears to be correct and the appeal is, therefore, dismissed with costs.

**Sharma, J.**

8. I agree.

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