

ALLAHABAD HIGH COURT

Gopal Ram

Vs

Lachmi Misir

(Sulaiman and Banerji, JJ.)

12.03.1926

JUDGMENT

Sulaiman, J.

1. This is a plaintiffs' appeal arising out of a suit for pre-emption in respect of a lease dated 9th October 1917, which was presented for registration on the 21st of December 1917, and was actually registered on the 22nd of December 1917. The suit was brought on the 20th of December 1923. Thus the suit was within six years of the date of registration, but beyond six years from the date of the execution of the lease. Both the Courts below have held that the present suit is barred by limitation and have relied on a case of this Court: *Bindeshri v. Somanath Bhadry*¹

2. Admittedly, the present suit is not governed by Article 10 of the Limitation Act, inasmuch as the transfer in the present case is not a sale. It is conceded that it is governed by Article 120 instead. The main question to consider, therefore, is whether the suit was brought within six years of the date when the right to sue accrued. No doubt, it is true in a sense that before the actual registration, the plaintiff could not have maintained a suit for pre-emption. The learned vakil for the plaintiff argues that his cause of action did not accrue till the registration actually took place. But there may be cases of transfers where there is no registered document at all, for example, compromise decrees. The plaintiff's right to pre-empt arises on account of a transfer by lease. His right to pre-empt accrued when the transfer in question took place. It cannot be doubted that although the lease was registered subsequently, in the eye of the law it took effect from the date of its execution. The transfer, therefore, took place on the 9th of October 1917.

3. Under Section 47 of the Indian Registration Act, although a document, so long as it remains unregistered, is not valid, yet as soon as it has been registered and that requirement has been complied with, it takes effect from the date of its execution. When the law has given to a transaction a retrospective effect, it must have that effect;. The case of *Bindeshri v. Somanath Bhadry* AIR 1916 All 199(Supra) is analogous. In that case a claim for recovery of zari-i-

chaharum brought more than six years after the execution of the sale-deed, though within six years from the data of its registration, was held to be barred by limitation on the ground that the right to sue accrued to the plaintiff from the data of the sale and not from the data of the registration.

4. We accordingly dismiss this appeal with costs including fees in this Court on the higher scale.

Cases Referred.

1 AIR 1916 All 199