

Hirdey Narain Vs. Alam Singh

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Court : Allahabad

Decided On : Jun-29-1918

Reported in : AIR1918All13; 48Ind.Cas.353

Judge : Henry Richards, C.J. and ;Tudball, J.

Appellant : Hirdey Narain

Respondent : Alam Singh

Judgement :

1. This appeal arises under the following circumstances. The plaintiff in a pre-emption suit obtained a decree for pre-emption on the 11th of October 1915. By this decree he was directed to lodge in Court the pre-emption money within six months, and it further decreed that in the event of his failing to do so the suit would stand dismissed with costs. It will thus be seen that the decree was a decree in favour of the plaintiff on certain conditions. If those conditions were not fulfilled, the decree became a decree in favour of the defendant vendee. The plaintiff did not deposit the money within six months. The last day which would have enabled the plaintiff to comply with the decree was the 11th of April 1916. This was a holiday. It was alleged (and it has been found by the Court below) that the money was brought to the Nazir on the 12th of April, a day on which the Court was sitting. On that day he obtained a chalan which would have enabled him to have deposited the money in the Treasury provided the Treasury was sitting. It appears that the Treasury was not open on the 12th and was only open for an hour on the 13th and

the result was that the deposit was not completed until the 14th. The Court of first instance on an application to execute the decree held that the money had not been deposited in Court within the time, specified in the decree. On appeal the lower Appellate Court held that the money must be deemed to have been deposited within time, applying (apparently by analogy) Section 4 of the Limitation Act and Section 10 of the General Clauses Act. This Court has held that in the case of a pre-emption decree, which has become final, no Court has any power to alter the terms of the decree so as to extend the time allowed for payment. It must be remembered that the decree in its very terms becomes a decree in favour of the defendant vendee when the conditions imposed upon the plaintiff have not been complied with. In the present case the plaintiff pre-emptor appears not to have had his money ready until the period of six months had almost expired. In the end it was a money-lender who came with the money accompanied by the plaintiff's agent on the 12th of April 1916. In our opinion, Section 4 of the Limitation Act and Section 10 of the General Clauses Act only apply to the cases in which a period of limitation has been prescribed as mentioned in those sections, and do not apply to a condition prescribed in the decree itself. The respondent's learned Vakil has referred to the cases of Sambasiva Chari v. Ramasami Reddi 22 M. 179 : 8 M.L.J. 265 : 8 Ind. Dec. (N.S.) 127, Shooshee Bhusan Rudro v. Gobind Chunder Roy 18 C. 231 : 9 Ind. Dec. (N.S.) 154 and Munna Lal v. Radha Kishan 30 Ind. Cas. 186 : 13 A.L.J. 793 : 37 A. 591. In our opinion none of these authorities apply to the circumstances of the case we have before us. We allow the appeal, set aside the order of the Court below and restore the order of the Court of first instance with costs in all Courts.