

Chandanmal Vs. Phool Chand

Chandanmal Vs. Phool Chand

SooperKanoon Citation : sooperkanoon.com/755102

Court : Rajasthan

Decided On : May-05-1952

Reported in : AIR1952Raj181

Judge : Wanchoo, C.J. and; Bapna, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 20, Rule 14 - Order 41, Rule 2; Court-fees Act, 1870 - Sections 10; Pre-emption Marwar Law, 1922 - Sections 9 and 10

Appeal No. : First Appeal No. 17 of 1949

Appellant : Chandanmal

Respondent : Phool Chand

Advocate for Def. : Maghraj, Adv.

Advocate for Pet/Ap. : Sohannath, Adv.

Disposition : Appeal dismissed

Judgement :

Wanchoo, C.J.

1. This is an appeal by Chandanmal against the decree of the District Judge of Nagaur in a pre-emption matter.

2. The appellant and others had brought a suit for pre-emption against Mangilal and other defendants respondents with respect to a house, and wanted to pre-empt it on payment of Rs. 900/- though the sale deed was for Rs. 1,700/-.

3. The suit was contested by the defendants who claimed that Rs. 1,700/- were actually paid. The defendants also claimed Rs. 5,200/- for improvements made in the house by them after the purchase.

4. The District Judge decreed the suit and ordered that the defendants shall deliver possession of the house in dispute to the plaintiffs on deposit of Rs. 6,900/-. He further ordered that this sum shall be deposited in court within three months from the date of his judgment, which was 28th of February, 1949. There was deficiency of court-fee also, and the District Judge ordered that the deficiency in court-fee would also be made good within the same period of three months. It was finally ordered that in case of default the suit shall stand dismissed with costs.

5. An appeal was filed in the High Court of the former State of Jodhpur on the 1st July, 1949, and has come to this Court for disposal.

6. It is admitted by the appellant that the sum of Rs. 6,900/- was not deposited within the period of three months allowed by the District Judge. It is also admitted that the deficiency in court-fee was not made good within that time.

7. Three preliminary objections have been raised on behalf of the defendants respondents in this appeal.

8. It has first been urged that the deposit of Rs. 6,900/- having not been made within the time allowed by the District Judge, and the appeal not having been filed within that time, the appeal is not maintainable.

9. Secondly, it is urged that the court-fee having been not made good within the time allowed, and no ground of appeal having been taken with respect to deficiency in court-fee, the appeal is not maintainable.

10. Lastly, it has been urged that in view of Sections 9 and 10 of the Law of Pre-emption in Marwar of 1922, the pre-emptors have lost their rights of pre-emption,

and the appeal therefore should fail.

11. So far as the first point is concerned, it may shortly be disposed of. The appeal was within time when it was filed. Even if it be that on the 1st of July, 1949, there was no decree in favour of the plaintiffs, there would still be a decree of the District Judge dismissing the suit on failure of the plaintiffs to comply with the order requiring certain sums to be deposited within three months. The contention for the respondents that there was no decree which could be appealed against is not correct, and the appeal must be deemed to be against the dismissal of the suit.

We may in this connection refer to -- 'Kodai Singh v. Jaisri Singh', 13 All. 189 (F.B.), which was a Full Bench decision of five Judges. That was also a suit for pre-emption, and a decree had been passed conditional on payment into court of a certain sum within a specified time with the condition that the suit would stand dismissed if the amount was not paid within the time allowed. The plaintiff, in that case, did not pay the amount within the time allowed, but after the expiration of the term mentioned therein filed an appeal.

It was held by the Full Bench that as the suit stood dismissed by reason of the plaintiff having failed to deposit the sum required within the time allowed the plaintiff could appeal from the decree dismissing the suit, and could raise questions as to the propriety of the first court's findings on the matter of price and the time allowed to him within which to pay the amount into court. The appeal was therefore treated as an appeal from the decree dismissing the suit. The facts in the present case are exactly similar, and we are therefore of opinion that there is no force in this contention on behalf of the respondents.

12. Coming to the second point about the failure to deposit the deficient court-fee within time, the contention of the respondents is that as there was deficiency in court fee on the plaint, Section 6 of the Marwar Court Fees Act, 1941, applied, and the plaint could not even be filed in any court of justice. As such there was no plaint before the court, and therefore the appeal was not competent.

13. Learned counsel for the appellant, however, relies on Section 10 of the Marwar Court Fees Act in this connection. That section provides that if the court sees

reason to think that the valuation of the property in a case of this kind is wrongly estimated, the court shall make an investigation into the matter and find the correct valuation. If it is found thereafter that the valuation was less than what it should have been, the court shall require the plaintiff to pay so much additional fee as would have been payable on the correct valuation. In such a case, the suit shall be stayed until additional fee is paid, and if the additional fee is not paid within such time as the court shall fix, the suit shall be dismissed.

It is urged that the court should have followed this procedure, and should have asked the plaintiffs to make good the deficiency in court-fee within a certain time. If they failed to do so, the court could then have dismissed the suit. In this case, however, the court passed a decree in favour of the plaintiffs conditional on their paying the court-fee within a certain time with a penalty that if the court-fee was not paid within that time, the suit shall stand dismissed. As the proper procedure was not followed in this case, it is submitted that the order of the court is wrong.

14. We do not approve of the form in which the order was passed in this case, and trust that subordinate courts will comply with the procedure laid down in Section 10 of the Court Fees Act but we do not think that there is anything illegal in the order passed by the District Judge. In effect the order meant that three months' time was allowed to the plaintiffsto make good the court-fee, and an order was passed in advance that if the court-fee was not made good within that time, the suit shall stand dismissed. Orders worded in the same terms were considered in -- 'Beni Prasad v. 'Om Prakash', A.I.R. 1938 All. 497, and -- 'Sheo Prasad Kaur v. Bhanu Pratap Singh', A.I.R. 1946 Oudh. 52, and were not held to be illegal. Therefore, though the form of the order in this case about making good the deficiency in court-fee was not correct the order is not illegal, as there is nothing in law which forbids the pass-Ing of such an order. Under these circumstances, the order must be held to be good and operative, and the suit stood dismissed on this ground also viz. that the court-fee was not made good within the time allowed.

15. As there is no ground of appeal with respect to this matter, it is urged on behalf of the respondents that the appellant should not fee heard to challenge that order, and if that order stands, there is no properly stamped plaint before the court, and

the appeal must therefore fail.

16. Learned counsel for the appellant prays that he may be given leave to argue this matter of deficiency in court-fee under Order 41, Rule 2 of the Code of Civil Procedure.

This prayer is however being opposed on behalf of the respondents on the ground that a valuable right has arisen to the respondents, and it would not be proper to grant leave now long after the period of limitation has expired to the appellant to raise this question of deficiency in court-fee. Reliance in this connection is placed on -- 'Jiwan Shah v. Mt. Fateh Bibi', A.I.R. 1921 Lah. 228, and -- 'Birdhichand v. Mt. Kachri Bai', A.I.R. 1946 Nag. 135. It was held in these cases that a fresh point, which had not been raised in the grounds of appeal, should not be allowed to be raised after the period of limitation had long expired, and when the appellant had ample time in the period during which the appeal was pending (in the present case almost three years) to raise it by way of amendment of the memorandum of appeal.

17. We agree with the above cited cases, and refuse leave to the appellant to raise this fresh ground now almost three years after the period of limitation had expired. We may add that in view of what we are going to say just now on the third point raised on behalf of the respondents, it would be no use granting leave.

18. The last point, that has been urged, is that in view of Sections 9 and 10 of the Law of Pre-emption in Marwar, the right of the plaintiffs to pre-empt the property has been lost. Sections 9 and 10 of the Law of Pre-emption in Marwar read as follows :

'Section 9: 'If the Court finds for the plaintiff, the decree shall specify day on or before which the purchase money shall be paid in Court.'

Section 10: 'If such purchase money is not paid into the Court before it rises on that day, the decree shall become void, and the plaintiff shall, so far as related to such sale, lose his right of pre-emption over the property to which the decree relates.'

19. The contention on behalf of the respondents is that the purchase money should have been deposited by the 28th of May, 1949, and as nothing was deposited by that date, the plaintiffs have lost their right of pre-emption over the property.

20. This argument is met on behalf of the appellant in two ways. In the first place it is urged that as there was vacation from the 16th of May to the 30th of June, it was not possible for the plaintiffs to deposit the purchase money on the 28th of May. Therefore they had a right to deposit the money on the next re-opening day, namely, the 1st of July. On that day, however, they filed the appeal, and therefore they did not lose the right of pre-emption. In the alternative, it is urged that the period fixed in the decree counts from the date on which the decree of the final Court of appeal is passed, and as the High Court has not yet passed any decree, the time has not yet expired.

21. So far as the first ground is concerned, it is enough to say that there is no force in it, and that it was possible for the plaintiffs to deposit the purchase money even on the 28th of May 1949, as the civil courts were not closed for all purposes during the vacation of that year. An order was passed by the High Court of the former State of Jodhpur on the 2nd of May, 1949, with respect to the vacation of that year in the Subordinate courts. It was ordered that no civil cases will be taken up except such as were more than one year old on the 1st of May, 1949. The civil courts were therefore not closed completely, and were open for the decisions of cases which were pending for more than one year on the 1st of May, 1949.

It was also ordered that, in order to avoid hardship to the litigant public, the civil courts would entertain plaints and petitions in urgent cases, even during the vacation. This was obviously an urgent case for the time fixed by the court was expiring during the vacation on the 23rd of May. The District Judge would, therefore, have accepted the purchase money, even if it was deposited on the 28th of May. Therefore, the contention of the appellant that he could not possibly deposit the money on the 28th of May fails.

22. Learned counsel for the appellant relies on -- 'Himmun v. Fauja', A.I.R. 1921 Lah. 6 (F.B.), and -- 'Muhammad Jan v. Shiam Lal', A.I.R. 1924 All. 218 (F.B.). It

was held in these cases that where the court is closed on a day when a certain act has to be done, the act can be done on the next re-opening day. These cases, however, have no application to the facts of the present case, because the courts were not completely closed on the 28th of May, and it was open to the plaintiffs to deposit the purchase money on that day. The appellant, therefore, cannot claim that he could have deposited the money up to the 1st of July.

23. In passing we may refer to another argument viz., that the plaintiffs had been ordered to deposit Rs. 6,900/-, though Section 9 of the Law of Pre-emption in Marwar only requires the pre-emptor to deposit the purchase money which was at the best Rs. 1,700/- in this case. Reliance in this connection was placed on -- 'Ramchandra v. Jailal', 1950 R.L.W. 34. In that case it was held that the plaintiff had to deposit only the purchase money to save the operation of Section 10 of the Law of Pre-emption in Marwar. In the present case, however, the plaintiffs have deposited nothing, not even Rs. 1,700/-, which was held by the court to be the purchase money. Under these circumstances, they cannot take advantage of 'Ram-chandra's case'. It must, therefore, be held that the plaintiffs failed to deposit the purchase money within the time allowed by the District Judge.

24. Then we come to the alternative 'argument, namely, that even if the plaintiffs failed to deposit the money within the time allowed by the District Judge, Section 10 of the Law of Pre-emption in Marwar does not come into operation, because the time has to be counted from the date of the judgment of this Court. Reliance in this connection is placed on -- 'Jai Krishna v. Brijpal Singh', AIR 1940 pudh 120 (F.B.), where an exactly similar provision in the Oudh Laws Act came to be interpreted. In that case also the plaintiff had failed to deposit the money within the time allowed by the court, and had filed his appeal after the time allowed by the court for depositing the money had expired. The learned Judges by two to one held that the right of pre-emption was not lost when the pre-emptor had not deposited the amount, but had preferred an appeal contesting the amount either before or after the expiry of the time fixed by the trial court, and the appeal had not become infructuous by reason of his failing to deposit the money.

25. This case certainly supports the appellant, but we must say with all respect that we are not in agreement with the majority decision, and prefer the view of the dissenting Judge. Where the plaintiff has been ordered to deposit the purchase money within a certain time, two contingencies can arise, namely,

1. that he deposits the amount within the time allowed, and
2. that he does not do so.

As regards the first, there is nothing more to be said, as the money has been deposited, and the order has been complied with. The second contingency may again be divided into two parts, namely, (1) that the money has not been deposited and no appeal has been filed, and (2) that the money has not been deposited, but an appeal has been filed. In the first case again there is no trouble. If money has not been deposited and no appeal has been filed, the order of the trial court becomes final, and the right of pre-emption is lost.

26. The second case may again be subdivided into three parts, namely,

1. the appeal has been filed and decided before the time fixed by the trial court expires,
2. the appeal has been filed before the time fixed by the trial court has expired, but has not been decided when the time expires,
3. the appeal is filed after the time has expired, and naturally therefore it has not been decided before the expiry of the time.

27. In the first of these cases, there is no difficulty, for the appeal has been decided within the time allowed, and the appellate Court would pass its own order about what further time it allows. In the second case, the appeal has been filed, but has not been decided before the time fixed by the trial court expires. In such a case, we are of opinion that the decree of the trial court is subject to the result of the appeal, and therefore even if the money has not been deposited within the time allowed, the right of pre-emption is not lost till the appeal is decided. Here again the appellate court will obviously extend time if it allows the appeal.

28. It is the last case which presents some difficulty, and with which we have to deal. In such a case we have really to consider the situation on the day on which the period granted by the trial court expires. If, on that date, there is no appeal, and the money has not been deposited, Section 10, in our opinion, comes into play, and the right of pre-emption is lost. We see no difference in principle between a case where an appeal is not filed at all, and the case where an appeal is not filed by the day the time fixed by the trial court expires, for, in either case, Section 10 would apply.

If it were not so, it would mean that though on the date the time fixed expired the right of pre-emption was lost, it revived again later on when the appeal was filed subsequently. Further taking the other view would mean that the operation of Section 10 would remain in suspense till the period of limitation for appeal has expired. There is, in our opinion, no warrant for holding this, and we have no doubt that if the money has not been deposited within the time fixed by the trial court, and no appeal has been filed by that time, Section 10 comes into operation, and the right to pre-empt is lost.

29. We have read the judgments of the two learned Judges who formed the majority in -- 'Jai Krishna's case', AIR 1940 Oudh 120 (F.B.), and find that the arguments advanced by the learned dissenting Judge have not been met in those judgments. The learned Judges, who formed the majority, relied mainly on -- 'Kodai Singh's case', 13 All. 189 (F.B.) which we have mentioned above. But if we may say so with respect they failed to notice that there was no law corresponding to Section 15 of the Oudh Laws Act (which is similar to Section 10 of the Law of Pre-emption in Marwar) in the Province of Agra over which the High Court at Allahabad had jurisdiction.

30. We are, therefore, of opinion that the purchase money not having been deposited within the time allowed by the trial court, the plaintiffs in this suit lost the right of pre-emption under Section 10 of the Law of Pre-emption in Marwar, and the decree became void. As such the present appeal is incompetent because the right having been lost we cannot give any relief to the appellant.

31. Finally it is urged that the order of the District Judge was not in accordance with Section 9 of the Law of Pre-emption in Marwar, and therefore Section 10 does not come into play. Section 9 provides that a day would be fixed on or before which the purchase money shall be paid in court. In this case, the learned Judge did not fix a day, but said that the money should be deposited within three months, which, in our opinion, indirectly amounts to fixing a day, namely, the 28th of May 1949, and there is no force in this argument.

32. The preliminary objections therefore prevail, and the appeal is hereby dismissed as incompetent with costs to the contesting defendants respondents.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com