

1880

NARAINI
KUAR
v.
JURJAN
KUAR
NARAINI
KUAR
v.
BIREY LAL.

tude of instances it will be a useful test to apply in deciding whether the presence of parties is necessary to enable the Court "effectually and completely to adjudicate and settle the questions involved in the suit." I entirely agree with the remarks of Pontifex, J. in *Mahomed Badsha v. Nicol* (1), and applying them in the present cases, it appears to me that the joinder of the two sets of plaintiffs as defendants was not necessary to enable the Court effectually and completely to settle the question arising between the plaintiffs and Naraini Kuar in the respective suits. I, therefore, think that the Subordinate Judge improperly passed the two orders of the 4th of July and that these appeals must be allowed with costs. The defendants who have been added to the record will be struck off, their statements of defence returned to them, and the plaints restored to their original shape.

Appeals allowed.

1880
January 13.

Before Mr. Justice Pearson and Mr. Justice Spankie.

FARSHAHI LAL (DEFENDANT) v. RAM DIAL (PLAINTIFF).*

Suit for Pre-emption—Deposit of purchase-money—Appellate Court, powers of—Act X of 1877 (Civil Procedure Code), s. 214.

The decree of the Court of first instance in a suit to enforce a right of pre-emption directed that the sum which that Court had ascertained to be the purchase-money should be deposited within one month from the date of the decree. The plaintiff appealed, contending that such sum was not the purchase-money. While the appeal was pending the time fixed by the decree of the Court of first instance expired without any deposit having been made. The appellate Court dismissed the appeal, fixing by its decree, of its own motion, a further time for the deposit. *Held*, following *Sheo Prasad Lal v. Thakur Rai* (2), that the appellate Court was competent to extend the time for making the deposit, and its action and order did not contravene the provisions of s. 214 of Act X of 1877.

THIS was a suit to enforce a right of pre-emption in which the plaintiff alleged that the purchase-money was Rs. 600, and not Rs. 800 as entered in the deed of sale. The Munsif determined

(1) I. L. R., 4 Calc., 355.

* Second Appeal, No. 943 of 1879, from a decree of Mirza Abid Ali Beg, Subordinate Judge of Mainpuri, dated the 29th May, 1879, affirming a decree of Babu Sanwal Singh, Munsif of Etawah, dated the 14th December, 1878.

(2) H. C. R., N.-W. P., 1868, p. 254.

that the plaintiff was entitled to pre-emption, but found that the purchase-money was Rs. 800, and gave the plaintiff a decree dated the 14th December, 1878, which directed him to deposit the purchase-money, Rs. 800, within one month from the date of the decree, and that in default the decree should be considered null and void. The plaintiff appealed from this decree, and the Subordinate Judge on the 29th May, 1879, finding that the purchase-money was Rs. 800, made a decree dismissing the appeal, and directing the plaintiff to deposit the purchase-money within one month from the date the decree became final.

The defendant appealed to the High Court, contending that the Subordinate Judge "was not competent, in the absence of any objection in appeal, to modify the decree of the Court of first instance as regards the time within which the plaintiff had been directed to pay the purchase-money;" and "that, as the plaintiff failed to conform to the decree of the Court of first instance as regards the deposit of the purchase-money and took no exception in his appeal as regards the time fixed by that decree for the deposit, his suit should be held liable to dismissal as prescribed by s. 214 of Act X of 1877."

Pandit *Bishambhar Nath* and Munshi *Kashi Prasad*, for the appellant.

Munshi *Hanuman Prasad* and *Lala Lalta Prasad*, for the respondent.

The judgment of the Court (PEARSON, J., and SPANKIE, J.,) was delivered by

PEARSON, J.—The grounds of appeal are overruled by the Full Bench decision in *Sheo Prasad Lal v. Thakur Rai* (1), and it does not appear to us that the appellate Court's action and order contravened the provisions of s. 214, Act X of 1877. The appeal is dismissed with costs.

Appeal dismissed.

(1) H. C. R., N. W. P., 1868, p. 254.