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is to lay down general principles that the especial and extraordinary remedy by invoking the revisional powers of this Court should not be exercised unless as a last resource for an aggrieved litigant. In this case the ordinary remedies have not been adopted by the petitioner, and I do not think it is necessary for me, as a Court of revision, to go into the detail whether or not such facts exist as to justify the conclusion that the lower Court did not exercise jurisdiction.

Pandit *Sundar Lal* in an elaborate and able argument has, indeed, contended, as a matter directed to induce me to exercise the revisional powers of this Court, that the simplest course would be for me not only to decide matters of fact which would suggest one decision or other as to jurisdiction, but also to decide, even if there was jurisdiction, whether or not sufficient reasons existed for striking off the case in default. All I need say to this argument is that I do not think that the Legislature intended this Court, as a Court of revision, to exercise any such functions. I, therefore, decline to interfere in revision and dismiss the application with costs.

Application rejected.

APPELLATE CIVIL.

Before Mr. Justice Straight and Mr Justice Brodhurst.

CHAJJU (DEFENDANT) *v.* SHEO SAHAI (PLAINTIFF).*

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Pre-emption—Rival suits—Each pre-emptor made defendant in the other's suit—Suits tried together, but decided by separate decrees—Decree allowing pre-emption in one case only on condition of default by other pre-emptor—Finality of decree in superior pre-emptor's suit.—Appeal by inferior pre-emptor in his own suit—Appellate Court not competent to alter decree so as to affect superior pre-emptor's right.

In two rival suits for pre-emption each pre-emptor was made a defendant in the other's suit. The suits were tried together upon the same evidence and were disposed of by a single judgment, but by separate decrees. In one of the suits the pre-emptor obtained a decree in the terms of s. 214 of the Civil Procedure Code. In the other, the pre-emptor obtained a decree, subject to the condition that, in the event of the first pre-emptor failing to execute his decree, the second pre-emptor should be entitled to execute it. The decree in the first suit was not appealed, and became final. The second pre-emptor appealed from the decree in his own suit, upon the grounds that the amount ordered to be paid was excessive, and that the first pre-emptor had lost his right, and the decree in the second suit should not have been made subject to the condition above stated.

* Second Appeal No. 1427 of 1886 from a decree of H. G. Pearse, Esq., District Judge of Meerut, dated the 14th May, 1886, reversing a decree of Babu Brijpal Das, Subordinate Judge of Meerut, dated the 1st March, 1886.

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Held that the appellant, if he desired to get rid of the decision regarding the first pre-emptor's preferential right, should have appealed against the first pre-emptor's decree, but that that decree having become final, the questions between the two pre-emptors could not be re-opened on appeal from the second pre-emptor's decree.

This was a reference to a Division Bench by Mahmood, J., under the proviso to Rule I of the Rules of 11th June, 1887. The order of reference, in which the facts are fully stated, was as follows :—

MAHMOOD, J.—This is a case in which the question raised seems to be one of sufficient importance to be referred to a Division Bench.

The facts are that three persons, Sikandar, Aladad, and Durjan, executed a sale of their 10 biswansis share in favour of two persons, Sheo Sahai and Harjas, on the 6th June, 1884, for a sum represented in the sale-deed as Rs. 4,000. Thereupon Chajju, the present defendant, appellant, instituted a suit to enforce his right of pre-emption on the 3rd June, 1885, and to this suit he impleaded the vendors and the vendees, and subsequently the name of Sheo Sahai, plaintiff, respondent, was also added. This suit was numbered 130 in the register of the first Court.

Similarly Sheo Sahai, plaintiff, respondent, instituted another suit to enforce his right of pre-emption in respect of the same sale, dated the 6th June, 1884, and to that suit he impleaded the vendors and the vendees and the rival pre-emptor, Chajju, plaintiff in the suit No. 130. This suit was instituted two days after the earlier suit, *i.e.*, on the 5th June, 1885, and was numbered 131 in the register of suits.

Both these suits appear to have been tried together and upon the same evidence, and resulted in two decrees of even date, namely, the 1st March, 1886. In the judgment of the first Court it was held that Chajju, plaintiff in the suit No 130, had a right of pre-emption superior to that of Sheo Sahai, plaintiff in suit No. 131. Therefore the first Court passed a decree enforcing the right of Chajju to the property in suit upon payment of Rs. 4,000 as the consideration money in suit No. 130. In the other suit, No. 131, in which Sheo Sahai was the plaintiff, the first Court decreed his claim, but rendered the decree subject to the condition that, in the

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event of the plaintiff Chajju in the other case failing to execute his decree, Sheo Sahai was entitled to execute it. Chajju, plaintiff in suit No. 130, did not appeal, nor did Sheo Sahai or any other defendant to that action appeal against the decree in that suit. But Sheo Sahai, plaintiff in the suit No. 131, being dissatisfied with the decree passed in his favour, appealed to the lower appellate Court principally upon the ground that the amount of consideration was excessive, and that the pre-emptor Chajju, plaintiff in the other suit, had lost the right of pre-emption, and, as such, did not stand as an impediment to the exercise of his right of pre-emption.

Upon this appeal from the decree in suit No. 131 the learned Judge modified the decree of the first Court by reducing the purchase money to Rs. 701, and holding that Chajju had no right of pre-emption, because he was in collusion with the vendees of the sale of the 6th June, 1884.

In second appeal it is contended by Mr. *Sundar Lal* that the judgment and the decree of the lower appellate Court is erroneous, because the decree before him was the decree in suit No. 131, and the decree in the suit No. 130, not having been appealed against, became final, and as such binding upon the parties, the rival pre-emptors, namely, Chajju and Sheo Sahai, and that the lower appellate Court in adjudicating upon the decree in suit No. 131 practically set aside the finality of the decree in suit No. 130. Mr. *Chaudhri* on the other side contends that the effect of the decree of the lower appellate Court must be held to be limited to modifying the decree in suit No. 131, and the fact that the effect of it may be inconsistent with the decree in suit No. 130 does not vitiate the validity of the lower appellate Court's decree in this case.

In the case of *Kashi Nath* v. *Mukta Prasad* (1) I have expressed my view as to the array of parties in cases where in respect of one and the same sale rival suits to enforce the right of pre-emption are instituted. But the question raised in this case is one not covered by that ruling, and it is one which I consider sufficiently important to refer to a Division Bench. I therefore, under the proviso to Rule I of 11th June, 1877, refer the case accordingly.

Pandit *Sundar Lal*, for the appellant.

(1) I. L. R., 5 All. 370.

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Babu *Jogindro Nath Chaudhri*, for the respondent.

STRAIGHT and BRODHURST, JJ.—The facts of this case are very fully and clearly stated in the referring order of our brother Mahmood. The only argument addressed to us was based upon the sixth plea taken in the memorandum of appeal, namely, that the decree passed in favour of the defendant-appellant in suit No. 130 having become final by reason of no appeal being preferred from it, the matters in issue between him and the plaintiff No. 131, respondent before us and defendant in suit 130, had been heard and finally determined, and could not be again tried and determined in the appeal from the decree passed in suit 131. We are upon consideration constrained to hold that this contention is a sound one and must prevail. It is true that the first Court tried the two suits 130 and 131 together and disposed of them by a single judgment; but separate decrees were prepared, each of which was appealable by the party or parties aggrieved thereby, and, failing such appeal, finally settled the question between the plaintiff on the one side and the defendant on the other. In suit 130 as between the plaintiff Chajju and the defendant Sheo Sahai, the decree determined the issues as to the former's preferential right over the latter, and the amount to be paid, and directed the period within which it was to be paid, in accordance with the provisions of s. 214 of the Civil Procedure Code. This decree still stands, and the Rs. 4,000 having been paid in by Chajju, the decree-holder, within the specified time, he has now become entitled to possession of the property. It was from this decree that Sheo Shai, the respondent before us, should have appealed, if he desired to get rid of the decision in regard to the plaintiff Chajju's right to pre-empt, and not having done so, it was not competent for the Judge in the appeal from the decree in suit 131 to re-open the questions between those two persons.

In so far, therefore, as his decision dwelt with those matters and his decree affects Chajju, this appeal must be and it is decreed with costs, and the respondent's appeal to the lower appellate Court *quoad* Chajju dismissed with costs.

Appeal allowed.