

tion contemplates cases where there are judgment-creditors and not cases where the sole judgment-debtor is the sole creditor of another decree. I think this distinction is recognizable, and in *Hury Doyal Guho v. Din Doyal Guho* (1) it was actually ruled that a judgment-debtor may set-off against the amount of the decree against him the amount of a decree which he has obtained against the decree-holder and other persons.

I think the effect of the learned Subordinate Judge's decree in this case is consistent with the view which I have expressed, I therefore dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CIVIL.

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 RAM SUKH
 DAS
 v.
 TOTA RAM.

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 January 8.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Knor.

BECHAN RAI AND OTHERS (DEFENDANTS) v. NAND KISHORE RAI (PLAINTIFF) *

Conditional sale—Wājib-ul-arz—Pre-emption.

The pre-emptional rights of the parties to a deed of conditional sale cannot be affected by a *wājib-ul-arz* prepared subsequently to the execution of the deed of conditional sale, but prior to the sale becoming absolute, they not being parties to the *wājib-ul-arz*, and the *wājib-ul-arz* not apparently indicating any pre-existing custom of pre-emption in the village. *Raghubir Singh v. Nandu Singh*, (2) distinguished.

The facts of this case, so far as they are necessary for the purposes of this report, appear from the judgment of Edge, C. J.

Munshi *Jwala Prasad* and Munshi *Gobind Prasad*, for the appellants.

Pandit *Sundar Lal*, for the respondent.

EDGE, C. J.—This was a pre-emption suit brought under a *wājib-ul-arz* in respect of a sale of a share within the village. The sale arose in this way. The share-holder in the village executed in favour of the present vendees two deeds of conditional sale. Sub-

* Second Appeal No. 1691 of 1888 from a decree of Rai Lalta Prasad, Subordinate Judge of Ghazipur, dated the 13th August 1888, modifying a decree of Maulvi Sayyid Zain-ul-abdin, Munsif of Korantadih, dated the 9th January 1888.

(1) I. L. R., 9 Calc., 479.

(2) Weekly Notes, 1891. p. 134.

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sequently to the execution of the deeds and to the making of the contracts embodied in the deeds a *wājib-ul-arz* was prepared, agreed to and sanctioned in the village. After the making of the *wājib-ul-arz* the mortgage by conditional sale became, on operation of the agreement contained in the deeds of conditional sale and the default of the mortgagor, an absolute sale. It is in respect of this absolute sale that this pre-emption suit has been brought. According to the plaint the plaintiff, respondent here, alleged that by the *wājib-ul-arz* it was agreed that there should be a right of pre-emption in the case of any share-holder wishing to sell, mortgage, &c., his share. The plaintiff did not rely upon any custom of pre-emption existing in the village at the time of the execution of the deeds of conditional sale. He simply relied upon an agreement contained in a *wājib-ul-arz* subsequent in date to the deeds of conditional sale, by which the right of pre-emption was created in the village. It appears to me that no subsequent village contract to which the parties to the conditional sale-deeds were not agreeing parties could alter the rights of the conditional vendee under his deeds. Those rights came into existence on the making of the deeds of conditional sale. The change of the transaction from one of mortgage to one of absolute sale merely followed as the legal result of events contemplated by the contract of conditional sale. We were referred to the case of *Raghubir Singh v. Nandu Singh* (1). With regard to that case I may point out that there not only was a *wājib-ul-arz* agreement relied upon, but the plaintiff also relied upon a village custom. A *wājib-ul-arz* may not only be evidence of the existence of village custom at the date of the *wājib-ul-arz*, but it may also possibly afford evidence that such custom was a pre-existing custom in the village. How far these considerations account for the decision of the case I need not consider. In the present case I am clearly of opinion that the subsequent *wājib-ul-arz* agreement cannot affect the legal and equitable rights which the conditional vendee has by the agreement contained in the deeds of conditional sale acquired. I would allow the appeal and dismiss the suit with costs in all the Courts.

(1) Weekly Notes, 1891, p. 134.

KNOX, J.—I also concur in decreeing the appeal. In fact I should have had no difficulty in arriving at this decision, but for a reference which was pressed upon us to the judgment in *Raghubir Singh v. Nandu Singh* (1), to which I was a party. Upon reference to the notes taken when that case was argued, I am of opinion that there was this clear distinction between that case and the case now before us, that in the prior case the claim for pre-emption proceeded not merely upon the *wājib-ul-arz*, but also upon a custom alleged in the plaint and borne out by the language used in the *wājib-ul-arz*. In the present case no attempt has been made to base the claim upon custom, and I have not been referred to any clause in the *wājib-ul-arz* which indicated that any custom upon this point existed prior to the completion of the *wājib-ul-arz*, which was admittedly completed in the village between the time the deeds of conditional sale were executed between the parties and afterwards became a complete sale.

Appeal decreed.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.

RAM MANOHAR MISR (DEFENDANT) v. LAL BEHARI MISR AND ANOTHER
(PLAINTIFFS).*

Civil Procedure Code—s. 514—Arbitration—Power of Court to extend time for making award.

A Court has power to act under s. 514 of the Code of Civil Procedure at any time before the award is actually made, whether the time previously limited for making the award has expired or not. *Raja Har Narain Singh v. Chaudhrai Bhagwant Kuar* (2) referred to.

The facts of this case sufficiently appear from the judgment of the Court.

Mr. J. E. Howard, for the appellant.

The Hon'ble Mr. Spankie, for the respondents.

EDGE, C. J., and TYRRELL, J.—This is an appeal from a decree passed in accordance with an award. The learned counsel for the

* Second Appeal No. 873 of 1889 from a decree of J. C. Leupolt, Esq., District Judge of Gházipur, dated the 15th April 1889, confirming a decree of Babu Mrittonjoy Mukerji, Subordinate Judge of Gházipur, dated the 29th March 1884.

(1) Weekly Notes, 1891, p. 134. (1) L. R. 18, I. A. 55; s. c. I. L. R. 13 All. 300

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