

1910

MUHAMMAD
SAYEED
v.
MUHAMMAD
ISMAIL.

We accordingly allow the appeal and dismiss the claim as regards a sixth share of the property acquired by Muhammad Sayeed and a ninth share, acquired by Jawad Husain. We affirm the decree of the court below as regards the remainder of the claim. Under the circumstances we direct the parties to pay their own costs in all courts.

Appeal allowed.

REVISIONAL CIVIL.

1910
November 7.

Before Mr. Justice Sir George Knox and Mr. Justice Karamat Husain.

LACHMAN PRASAD (PLAINTIFF) APPLICANT v. RAM KISHAN (DEFENDANT) OPPOSITE PARTY. *

Civil Procedure Code (1908), order XX, rule 2—Judgement written but not delivered before transfer of Judge—Successor in office competent to pronounce his own judgement.

Where a Judge fixed a date for delivering judgement, wrote it out and placed it upon the record, but was transferred before the date fixed, and his successor took a different view and delivered his own judgement. *Held* that his successor in office was not obliged to deliver the judgement of his predecessor but was competent to pronounce a judgement of his own in the case. *In the Goods of Prew Chand Moonshiee* (1) followed. *Re Baker; Nicholas v. Baker* (2) referred to.

THE facts of this case, so far as they are necessary for the purposes of this report, are as follows. The Subordinate Judge of Jhansi having heard an appeal reserved judgement and appointed a certain date for delivery of judgement in the case. He also wrote a draft judgement and placed it on the record. Before delivering judgement, however, he ceased to be Subordinate Judge of Jhansi. His successor in office took a different view of the appeal from the former judge and pronounced his own judgement which dismissed the appeal, whereas the first judgement was for decreeing it. The plaintiff appellant appealed to the High Court.

Babu Piari Lal Banerji, for the appellant.

Babu Durga Charan Banerji (with him Babu Surendra Nath Sen), for the respondent.

KNOX and KARAMAT HUSAIN, J.J.—The officer who held the post of the Subordinate Judge of Jhansi heard an appeal and had

* Civil Revision No. 25 of 1910.

(1) (1894) I. L. R., 21 Cal., 882. (2) 90) 44 Ch. D., 263.

inscribed in the order sheet that judgement would be delivered on a certain date. Further, he wrote out what took the form of a judgement in the case and place it upon the record. Before the appointed day arrived he ceased to be the Subordinate Judge of Jhansi. His successor in office did not pronounce the judgement written by his predecessor, but took a totally different view of the case from his predecessor and delivered a judgement contrary to that which, it would appear, his predecessor had intended to deliver. It is contended before us that the judgement which was written but not pronounced by the predecessor should have been pronounced by the Judge who succeeded him in office. Authority for this contention is based upon the words used in order XX, rule 2, and it is contended that the words "it may pronounce" are mandatory and left the successor no option but to pronounce the judgement which he found upon the record. No authority has been given to us for this view. On the other hand, we are indebted to the other side who referred us to *Re Baker; Nicholas v. Baker* (1), adopted by the Calcutta High Court in *In the Goods of Prem Chand* (2). We agree with the Calcutta High Court as to the meaning to be put upon the word "may," and dismiss the appeal with costs.

Application dismissed.

1910

LACHMAN
PRASAD
v.
RAM KISHAN.

Before Mr. Justice Sir George Knox and Mr. Justice Karamat Husain.
KAPIL DEO SINGH (PLAINTIFF) APPLICANT V. RAM RIKHA SINGH AND
OTHERS (DEFENDANTS) OPPOSITE PARTIES.*

1910
November 8.

*Civil Procedure Code (1908), order XXXIII, rule 1—Inquiry into pauperism—
Claim for redemption of mortgage—Applicant able to raise money upon
security of equity of redemption.*

Held that a plaintiff seeking to sue for redemption *in forma pauperis* cannot claim to sue as a pauper so long as he can raise money on his equity of redemption and that in so doing he will not in effect be mortgaging his claim. *Vedanta Desikacharyulu v. Perindeamma* (3) distinguished.

THIS was an application for leave to sue *in forma pauperis*. The facts were these:—The applicant applied for leave to sue as a pauper for the redemption of a certain mortgage. He was

* Civil Revision No. 64 of 1910.

(1) (1894) I. L. R., 21 Cal., 332. (2) (1890) 44 Ch. D., 262.
(3) (1881) I. L. R., 3 Mad., 249.