

APPELLATE CIVIL.

1912
June 10.

Before Mr. Justice Karamat Husain and Mr. Justice Tudball.

ALI HUSAIN (DECREE-HOLDER) v. AMIN-ULLAH (JUDGEMENT-DEBTOR).*

Pre-emption—Conditional decree—Decretal amount deposited in court—Decree enhanced in appeal—Additional payment made not covering amount withdrawn as costs.

A successful plaintiff pre-emptor deposited in court the amount of the decree in his favour, but subsequently withdrew therefrom the amount of the costs decreed in his favour, on the amount payable being enhanced on appeal he paid into Court the difference between the original and appellate decrees. Held that the decree had been fully complied with. *Gopal Saran v. Ishri (1), Balmukand v. Pancham (2), Parmanand Rast v. Gobardhan Sahai (3) and Bechai Singh v. Shami Nath (4)* followed.

The facts of this case were as follows:—

This was a suit for pre-emption. The pre-emptor succeeded in his suit. The first court ordered him to deposit Rs. 6,800. He carried out the order of the court. Subsequently, in execution of his own decree for costs, he attached and received from the Court a sum of Rs. 314-8-0 out of the amount deposited by him. There was an appeal in the pre-emption suit to the High Court, and the Court modified the decree of the first court by ordering the pre-emptor to pay a sum of Rs. 10,000, instead of Rs. 6,800. He deposited in compliance with this order an extra sum of Rs. 3,200. This deposit was made in time. The judgement-debtor took objection to this deposit on the ground that it was not a compliance with the order of the High Court, inasmuch as the decree-holder had taken out the sum of Rs. 314-8-0 out of the sum previously deposited by him. The court below disallowed the objection. The judgement-debtor appealed to the High Court.

Dr. *Tej Bahadur Sapru*, for the appellant.

The Hon'ble Dr. *Sundar Lal* and Maulvi *Shafi-uz-zaman*, for the respondent.

KARAMAT HUSAIN and TUDBALL, JJ.:—The pre-emptor succeeded in his suit for pre-emption. The first court ordered him to deposit Rs. 6,800. He carried out the order of the court. Subsequently, in execution of his own decree for costs, he attached and

* First Appeal No. 130 of 1912, from a decree of Murari Lal, Officiating Subordinate Judge of Cawnpore, dated the 18th of September, 1911.

(1) (1884) I. L. R., 8 All., 351.

(3) (1906) I. L. R., 28 All., 676.

(2) (1888) I. L. R., 10 All., 400.

(4) (1910) 8 A. L. J., Notes, p. 27.

got a sum of Rs. 314-8-0, out of the sum deposited by him. There was an appeal in the pre-emption suit to this Court, and this Court modified the decree of the first court by ordering the pre-emptor to pay a sum of Rs. 10,000, instead of Rs. 6,800. He deposited in compliance with the order of this Court an extra sum of Rs. 3,200. This deposit was made in time. The judgement-debtor took objection to this deposit on the ground that it was not a compliance with the order of the High Court, inasmuch as the decree-holder had taken out the sum of Rs. 314-8-0 out of the sum previously deposited by him. The court below disallowed the objection. Hence this appeal. There is a series of decisions of this Court; see *Ishri v. Gopal Saran* (1), *Balmukand v. Pancham* (2), *Parmanand Raot v. Gobardhan Sahai* (2), and *Bechai Singh v. Shumi Nath* (3). In all these cases it has been ruled that such a deposit as was made by the pre-emptor in this case, was a complete compliance with the order of the court. Mr. Justice TYRRELL in *Balmukand v. Pancham* no doubt, took a different view. But we are bound to follow the other rulings of this Court with which we ourselves agree. The appeal fails and is dismissed with costs.

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Appeal dismissed.

REVISIONAL CRIMINAL.

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June 24.

Before Mr. Justice Chamier.

EMPEROR v. ABBU SINGH AND OTHERS.*

Ac No. III of 1867 (Public Gambling Act), section 5—Jurisdiction—Power to issue search warrant—“Officer invested with the full powers of a Magistrate” —Sub-divisional officer issuing warrant for search outside his sub-division.

Held that a search-warrant issued under section 5 of the Public Gambling Act, 1867, by a first class magistrate was not invalid by reason of the fact that the house to be searched was situated outside the limits of the tahsils in respect of which such magistrate had been appointed sub-divisional officer.

This was an application for revision of an order convicting and sentencing the applicants under sections 3 and 4 of the Public Gambling Act, 1867. The only point taken in revision was that

* Criminal Revision No. 358 of 1912, from an order of H. Dupernex, Sessions Judge of Farrukhabad, dated the 13th of April, 1912.

(1) (1888) I. L. R., 10 All., 400. (2) (1906) I. L. R., 28 All., 676.

(3) (1910) 8 A. L. J., Notes, p. 27.