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shall, as from the date of the decision of the court trying the petition, vacate his office as member of the Board, and shall, if the court which tried the petition so direct, be disqualified for any period not exceeding five years from being elected as member of the Board." This rule is very vague and unsatisfactory. To refer the parties to a "competent court," without giving any definition of that tribunal, was certainly calculated to create great confusion and uncertainty, as also was the omission to provide expressly that the decision of the tribunal should be final. We are glad to say that the Government contemplate an alteration of the rules, which in our opinion is very much needed. Giving the best construction we can to this rule, we consider that it was intended to provide that the validity of municipal elections should only be tested by an election petition presented to one tribunal, and that the decision of that tribunal should be final. The same view has been taken by a Bench of this Court in the case of *Khumni Lal v. Raghunandan Prasad* (1). The Second Additional Judicial Commissioner of Oudh took a similar view in the case of *Sundar Lal v. Muhammad Faiq* (2). If this view be correct (and on the whole we think it is) then the decision of the Munsif was final and no appeal lay to the lower appellate court, and the appeal was properly dismissed. We dismiss the appeal. We direct the parties to bear their own costs.

Appeal dismissed.

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October, 24.

Before Sir Henry Richards, Knight, Chief Justice, Mr. Justice Sir Pramada Charan Banerji and Mr. Justice Tudball.

SURANJAN SINGH AND ANOTHER (PLAINTIFFS) v. RAM BAHAL LAL AND OTHERS (DEFENDANTS).*

Civil Procedure Code (1908), sections 2, 104, 148—Pre-emption—Decree in pre-emption suit fixing time for payment—Order extending time—Appeal—"Decree"—"Order."

Held that section 143 of the Code of Civil Procedure (1908) does not entitle the court to extend the time fixed by the decree for payment of the purchase money in pre-emption cases.

Held also, that an order made under section 148 of the Code of Civil procedure (1908) is not a decree within the meaning of section 2 of the Code, nor is it appealable as an order under section 104. *Rahima v. Nepal Rai* (3) distinguished.

* Appeal No. 27 of 1913 under section 10 of the Letters Patent.

(1) (1913) I. L. R., 35 All., 450. (2) (1912) 16 Oudh Cases, 36.

(3) (1892) I. L. R., 14 All., 520.

THIS was an appeal under section 10 of the Letters Patent from the judgement of a single Judge of the Court. The facts of the case appear sufficiently from the judgement under appeal, which was as follows :—

“ These appeals arise out of cross suits for pre-emption. In each case, the plaintiffs were given a decree for pre-emption of half of the property, and the decree went on to provide that if they did not pay the price within a month their claim would stand dismissed and, in that event, the plaintiffs in the other case were allowed a further period of fifteen days within which to pay in the price, so that if either set of plaintiffs failed to pay in the price, the other set would be entitled to take the whole of the property on complying with the terms of the decrees. The decrees in both cases were made on the 17th of June, 1911, and the period of one month expired on the 17th of July. No money was paid into court in either case by that date.

“ On the 19th of July Kirat Singh and others, the plaintiffs in one case, petitioned the court to grant an extension of the time limited by the decree, and by an order of the 25th of July time was extended to the 4th of August. Each set of plaintiffs paid into court the price specified in their decree before the 4th of August. The purchaser objected, but his objection was overruled. He then appealed to the District Judge in both cases and it was held that the first court had no power to extend the time limited by the decrees. The plaintiffs have appealed to this Court contending that there was no right of appeal to the District Judge against the orders of the first court, and that if the appeals were in order, the District Judge should have upheld the orders of the first court on the merits.

“ The purchaser has applied in each case for revision of the orders of the first court in case it is held that those orders were not appealable.

“ The plaintiffs rely upon section 148 of the Code of Civil Procedure as authorising the Munsif to extend the time fixed in the decrees. In *Jug Ram v. Jewa Ram* (1) BANERJI and TUDBALL, JJ., expressed grave doubts whether this section applied to suits for pre-emption, and in *Hukam Chand v. Hayat* (2), REID, C. J., held that this section did not apply to periods fixed by a decree. To the same effect is the decision of Messrs. EVANS and PIGOTT in *Narendra Bahadur v. Ajudhya Prasad* (3). I agree with the views expressed in these cases. It appears to me that the payment of money into court within a fixed time in pursuance of a decree is not an act prescribed or allowed by the Code within the meaning of section 148. According to the decision in *Bahima v. Nepal Rai* (4), which is binding upon me, I must hold that the orders of the Munsif were appealable. In my opinion the District Judge was right in setting those orders aside. The two appeals to this Court are dismissed with costs.”

The pre-emptors appealed under section 10 of the Letters Patent.

(1) (1909) 6 A. L. J., 647.

(3) (1909) 19 Oudh Cases, 28.

(2) (1912) 121 P. W. R.

(4) (1892) I. L. R., 14 All., 520.

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Mr. *M. L. Agarwala*, for the pre-emptors appellants, contended that the order under section 148, Civil Procedure Code, not being a decree, was not appealable: the case of *Rahima v. Nepal Rai* (1) was under section 87 of the Transfer of Property Act. There the order was a decree and therefore was appealable. An order for the extension of time does modify a part of the decree, but does not come within the definition of decree, which is a limited one in its nature. A revision would have to be filed against the order of amendment when the court had no power to make such amendment. An order under section 148 of the Code of Civil Procedure was not of the nature of the amendment of the decree. The decree was in fact never amended. It was submitted that section 148 applied to the case and no appeal lay from the order passed under that section as it could not be deemed to be a decree. If section 148 gave a discretion to the Munsif in pre-emption cases to extend time, it was properly exercised and the District Judge ought not to have interfered with the Munsif's order. If it did not apply, there was no appeal against the Munsif's order. The only remedy was an application for revision which had been filed and rejected. Section 148 could apply to such cases as well. Special provision was necessary in mortgage suits, as the Legislature intended that time in those cases should be extended only when there was good cause shown for it. Section 148 of the Code of Civil Procedure gave a discretion even when no good cause was shown. Order XX, rule 14, of the Code of Civil Procedure prescribed or allowed the payment into court of the purchase money, and when any period was fixed or granted by the court for the doing of any act prescribed or allowed by the Code, the court could extend the time under section 148. The words used in the section were "prescribes" or "allows" and when the court allowed time for payment it was the act of payment that was the act allowed.

Dr. *Surendra Nath Sen*, for the vendees respondents, submitted that an appeal lay from the order as that order was substituted for the original decree. Mr. Amir Ali's Civil Procedure Code, p. 837, was cited. Further, the order for extension of time was in effect an order in execution and was, therefore, appealable. The respondent

then might be allowed to apply for a review of the order rejecting the revision.

RICHARDS, C. J., BANERJI and TUDBALL, J.J.:—The facts out of which this and the connected appeal, No. 28 of 1913 under the Letters Patent, arise, are shortly as follows:—Two suits for pre-emption were brought by rival pre-emptors. These suits resulted in decrees by which the pre-emptors obtained the property in equal shares, conditional upon their paying their half shares of the purchase money into court, within the time specified in the decrees. The time specified elapsed without the purchase money having been paid by either pre-emptor.

Applications were thereupon made, purporting to be under section 148 of the Code of Civil Procedure, asking the court to extend the time of payment of the purchase money. The learned Munsif granted the application and extended the time. The purchase money was paid into court within the extended time.

Appeals were preferred by the defendants vendees against the order of the Munsif extending the time. Afterwards the decrees were put into execution. The appeal against the order of the Munsif extending the time coming before the District Judge, he held that section 148 did not apply and accordingly set aside the orders of the Munsif.

Second appeals were then preferred to this Court by the decree-holders on the ground that the decision of the Munsif was correct and ought not to have been interfered with by the District Judge, and, secondly, on the ground that no appeal lay to the District Judge. The vendees filed applications in revision contending that the Munsif had no jurisdiction under section 148 to extend the time. The second appeals and the applications in revision came before a learned Judge of this Court, who held that an appeal did lie to the District Judge and that his orders setting aside the orders of the Munsif were correct, and dismissed the second appeals. The applications for revision were dismissed because the learned Judge thought that there was no necessity for revision.

The plaintiffs have appealed under the Letters Patent.

The first question which we propose to deal with is whether the learned Munsif was right in extending the time for the payment of the purchase money under the provisions of section 148 of

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the Code of Civil Procedure. That section is as follows:—"Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Code, the court may in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired."

It is contended on behalf of the appellant that order XX, rule 14, "prescribes" or "allows" the payment into court of the purchase money by the successful pre-emptor. On reading order XX, rule 14, it will at once appear that all that is "prescribed" by the Code is the form which the decree in a pre-emption suit is to take where the plaintiff is successful and has not paid the money into court before decree. It nowhere prescribes or allows the payment into court of the purchase money. Such payment is in reality an incident of the claim for pre-emption. All that the order provides for is uniformity in the form of the decree which the courts make. We agree with the view taken by the learned Judge of this Court that section 148 does not entitle the court to extend the time fixed by the decree for the payment of the purchase money in pre-emption cases.

The next question is whether an appeal lay from the decision of the Munsif to the District Judge. Appeals only lie from decrees as defined by section 2 of the Code of Civil Procedure and from orders as specified in section 104. It seems to us that an order made under section 148 is clearly not an appealable order and is not a decree within the definition in section 2, nor is it an order covered by section 104. The only way therefore in which this order could have been set aside was by an application in revision to this Court. We at present have no application in revision before us.

The learned Judge of this Court was of opinion that he was bound by the ruling in *Rahima v. Nepal Rai* (1). In that case it was held that an order under section 87 of Act No. IV of 1882 extending the time for payment of the mortgage money by a mortgagor was a decree within the meaning of sections 2 and 244 of the Code of Civil Procedure of 1882. We may point out that that case entirely proceeded under the rulings of this Court in which it had been held that proceedings under the Transfer of

(1) (1892) I. L. R., 14 All., 520.

Property Act, subsequent to decree, were questions relating to the execution, discharge or satisfaction of the decree. This is certainly not so under the new Code. Special provision is, however, made for mortgage decrees and orders refusing to extend the time are expressly made appealable under order XLIII, rule 1, clause (o).

Under these circumstances we must allow the appeal, and set aside the decree of this Court and also of the District Judge. The parties will pay their own costs.

Appeal allowed.

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