

1914
 EMPEROR
 v.
 NATHI MAL.

municipal board, Cawnpore. I have no doubt that when Mr. R. H. Williamson was gazetted to the office of chairman of the municipal board, and took charge of that office, he was thereby divested of his territorial jurisdiction as magistrate, 1st class, attached to the Cawnpore district. Even if it could be contended that Mr. Williamson continued to be a magistrate of some sort while holding the office of chairman, municipal board, I am quite clear that he is not a magistrate subordinate to the District Magistrate. The order complained of cannot be sustained. It is therefore set aside.

Order set aside.

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 May, 28.

APPELLATE CIVIL.

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

DEBI SABAN TIWARI v. GUPTAR TIWARI (OPPOSITE PARTY)

(APPLICANT).*

Pre-emption—Suit decreed—Pre-emptive price enhanced on appeal by vendee, but no time fixed for payment—Practice.

The appellate court in a pre-emption suit enhanced the amount decreed to be payable by the pre-emptor in the first court, but omitted to fix any time within which the enhanced amount should be payable.

Held that the plaintiff pre-emptor was entitled to a reasonable time within which to pay in the amount decreed, and that having regard to the enhanced amount (Rs. 801) the time within which it was in fact paid (one month and one day after the decree) was reasonable, and the plaintiff was entitled to execute his decree.

THE plaintiff in this case obtained a decree for pre-emption of certain property on payment of Rs. 999, which sum was deposited in court within the time prescribed by the decree. The vendee, however, appealed as to the amount of consideration, and the appellate court directed the plaintiff pre-emptor to pay in a further sum of Rs. 801, but omitted to fix any time within which this further sum was to be paid. The plaintiff paid in the further amount a month and a day from the date of the decree and asked for possession of the property. This application was, however, dismissed and the order of dismissal was confirmed on appeal. The plaintiff thereupon appealed to the High Court.

Mr. *M. L. Agarwala*, for the appellant.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the respondent.

* Second Appeal No. 1390 of 1913, from a decree of Hidayat Ali, Subordinate Judge of Gorakhpur, dated the 22nd of August, 1913, confirming a decree of Raj Rajeshwar Sahai, Munsif of Basti, dated the 17th of May, 1913.

RICHARDS, C. J., and TUDBALL J.—This is an execution case arising out of a pre-emption suit. The real facts seem to have been that the court of first instance decreed the plaintiff's suit subject to his making a payment of Rs. 999, Rs. 24 out of which should be paid to the vendee. The Munsif's decree was not strictly in accordance with the judgement. We are, however, not concerned with that now. He subsequently amended it. Whether he had power to do so, we need not decide. The vendee appealed, complaining that the consideration allowed ought to be more than that decreed by the court of first instance. Mr. Rose by his judgement directed that he (the pre-emptor) should deposit the further sum of Rs. 825, including the Rs. 24, directed by the first court. This was really in addition to the money payable to the prior mortgagee. No time was mentioned when this Rs. 801 should be paid. The decree which was made was a simple dismissal of the appeal, obviously not in accordance with the judgement and drawn up in a grossly careless way. The pre-emptor in a month and one day after the decree paid the Rs. 801, into court, and then claimed possession of the property. The court to whom application was made for execution of the decree refused to order possession, holding that as the money was not paid within the time allowed by the court of first instance, the applicant was not entitled to execution. It was an absolute impossibility for the pre-emptor to pay the sum of Rs. 801, at the time allowed by the court of first instance, because it was not until the 12th of April, 1912, that any court had directed that he should pay this sum, and the time allowed by the first court expired on the 4th of April, 1912. The matter, therefore, stands thus. The court has not limited any time within which the Rs. 801 should be paid. The pre-emptor certainly paid it within a reasonable time after he was ordered to pay it. Under the circumstances of the case we think material justice requires that the plaintiff should be entitled to execute his decree. We accordingly set aside the decrees of both the courts below, and order that the application should be restored to its original number on the file of the first court and determined according to law, having regard to what we have said above. The appellant will have his costs.

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Appeal decreed.