

REVISIONAL CIVIL.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada
Chavan Banerji.*

1918
April, 25.

SAJJADI BEGAM (PLAINTIFF) v. DILAWAR HUSAIN AND
OTHERS (DEFENDANTS).*

Decree—Conditional decree ordering a plaintiff to make a payment within a specified time—Court not competent to extend time limited—Civil Procedure Code (1908), section 114—Review of judgment—Jurisdiction.

Except in the case of mortgage decrees, where a court by its decree orders a party to make a payment, or take certain action within a specified time and provides that certain detrimental consequences shall follow in the event of non-compliance with its order, the Court itself has no jurisdiction to extend the time limited by the decree, save on an application for review under section 114 read with order XLVII, rule 1, of the Code of Civil Procedure. *Nait Ram v. Bhagwan Chand* (1) overruled.

THE facts of this case were as follows:—

The plaintiff brought a suit for dower and for cancellation of two deeds. One of the objections raised by the defendants was that the court fee paid on the plaint was insufficient, inasmuch as no court fee had been paid in respect of the prayer for cancellation of the two deeds. The court framed an issue on this point and decided thereon that the plaintiff should pay an additional court fee of Rs. 20. The suit was decreed in respect of the dower and the cancellation of one of the two deeds. There was a condition embodied in the decree that the plaintiff was to pay up within a week the deficiency of Rs. 20 in the court fees, and that in default thereof the suit would stand dismissed with costs. Rs. 10 only was paid on behalf of the plaintiff within the time fixed. Shortly after the expiry of the week the defendants applied for execution of the decree, claiming that by reason of the condition not having been fulfilled the suit stood dismissed with costs, and consequently they were entitled to execute the decree for costs. Notice of this application was issued to the plaintiff. Thereafter the plaintiff made an application stating that she had not been informed that the requisite amount was Rs. 20, and praying for an extension of time under section 143 of the Code of Civil Procedure in order to enable her to pay in the remaining amount of the court fee. The court doubted whether it had any

* Civil Revision No. 186 of 1917.

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power under section 148 to extend the time, and further held that no sufficient grounds had been made out by the plaintiff for extending the time, even if it could be extended. The plaintiff's application was accordingly dismissed. Hence this application for revision.

Maulvi *Iqbal Ahmad* (for Mr. *Muhammad Yusuf*), for the applicant, submitted that the court below had jurisdiction to extend the time in this case. He relied on the ruling in *Nair Ram v. Bhagwan Chand* (1). He further submitted that having regard to the circumstances of the case this was a matter in which the court should have properly exercised its discretion in favour of the applicant and granted her extension of time.

Mr. *S. A. Haidar*, for the opposite party, submitted that the case cited by the applicant went against a long series of cases decided by the pre-emption Bench and the principle underlying those decisions governed the facts of the present case as well. The court would have to modify its decree if it granted an extension of time.

Maulvi *Iqbal Ahmad* replied.

RICHARDS, C. J., and BANERJI, J.:—The facts connected with this and the connected application are shortly as follows:—A suit was brought by the plaintiff for dower and also to set aside certain deeds executed by her deceased husband. A question as to the sufficiency of court fees arose, and eventually the court made a decree in the plaintiff's favour conditional upon her paying an extra court fee of Rs. 20, within a week. If this extra court fee was not paid the suit was to stand dismissed. What we have just now stated was all embodied in and was part of the decree itself. Unfortunately (it is said through the negligence of the plaintiff's pleader) she did not get proper information, with the result that she deposited Rs. 10 only within the time allowed. The defendants then made an application for execution of the decree on the ground that the decree was now in their favour, the deposit of Rs. 20 not having been made as provided in the decree. The plaintiff sought in vain to be allowed to pay in the extra Rs. 10. The court doubted that it had jurisdiction to extend time and rejected the

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application for extension of time. The plaintiff comes here in revision and contends that the court had jurisdiction and it ought to have exercised it. This Court always feels great difficulty in interfering with the discretion of the courts below on matters of discretion. But there seems to be a more formidable objection to the present application, namely, that once the term about depositing the Rs. 20 was embodied in the decree, the court itself, even if it desired, had no jurisdiction to alter its own decree save on an application for review of judgment under section 114, read with order XLVII, rule 1. The case of *Naik Ram v. Bhagwan Chand* (1) is cited. This was a decision of a single Judge and the judgment consists of a single line. The circumstances were no doubt in principle the same as in the present case. The judgment of the Court is :—“ The court had undoubtedly jurisdiction to extend the time.” It has been over and over again held in pre-emption suits, where the decree itself provides that the pre-emptor is to have possession conditional upon his paying the pre-emption money into court within a specified time, and that upon his failure to do so the suit shall stand dismissed, that the court has no jurisdiction to extend the time. The ground for these decisions has always been that the court has no jurisdiction to interfere with its own decree save in the manner we have mentioned above. There is no distinction between a pre-emption decree and any other decree which embodies certain conditions and provides for the suit being dismissed if those conditions are not complied with. The only exception is that of mortgage decrees : time can be extended in mortgage decrees by virtue of the provisions of order XXXIV. We reject the application, but under the circumstances we make no order as to costs.

We may here mention that we think that it would have been better had the court, after determining that the extra fee was payable, ordered the fee to be paid within a certain time, and delayed passing its decree until that time had expired.

Application rejected.

(1) (1917) 15 A. L. J., 511.