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come into the hands of the guardian by executing the sale-deed in favour of the defendant. It is clear, therefore, that proof of payment could not be submitted before the District Judge until the sale-deed had been completed. Therefore, in our judgement, the condition as regards the filing of proof of payment of the debts was a condition subsequent and the failure of the guardian to comply with that condition cannot affect the validity of the sale-deed in favour of the defendant appellant.

We may note in passing that, as a matter of fact, proof of payment of the debts was filed by Musammat Kelo along with the application that she made to the District Judge on the 1st of September, 1916.

For the reasons given above, we hold that the rights of the case were entirely with the defendant and not with the plaintiffs. Accordingly we allow the appeal, set aside the decrees of the courts below and dismiss the plaintiffs' suit with costs in all courts.

Appeal allowed.

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May, 2.

Before Mr. Justice Iqbal Ahmad and Mr. Justice Kendall.

SANOMAN SINGH AND OTHERS (OBJECTORS) v. RAJA RAM AND OTHERS (OPPOSITE PARTIES).*

Pre-emption—Decree conditioned on payment of purchase money within specified period of its becoming final—Meaning of "final."

Held that an appealable decree against which an appeal has not been filed becomes final on the expiry of the period of limitation prescribed for filing an appeal, and not from the day on which it was passed. *Hingan Khan v. Ganga Prasad* (1), and *Narain Das v. Lachman Singh* (2), dissented from. *Disa Singh v. Jaula Singh* (3), *Shaikh Ewaz v. Mokuna Bibi* (4), *Ram Sahai v. Gaya* (5), *Gopal Das v. Mamma Kunwar* (6) and *Fazal Husain v. Fazal-ud-din* (7), followed.

* Second Appeal No. 722 of 1925, from a decree of Radha Kishan, Subordinate Judge of Basti, dated the 15th of September, 1924, confirming a decree of Jagannath Singh, Munsif of Bausi, dated the 26th of April, 1924.

(1) (1876) I.L.R., 1 All., 293.

(2) (1880) I.L.R., 3 All., 135.

(3) *Weekly Notes*, 1881, p. 165.

(4) (1876) I.L.R., 1 All., 132.

(5) (1884) I.L.R., 7 All., 107.

(6) (1907) 5 A. L. J., 136.

(7) (1925) I.L.R., 47 All., 533.

THE facts of this case are fully stated in the judgement of the Court.

Munshi *Harnandan Prasad*, for the appellants.

Babu *Piari Lal Banerji*, for the respondents.

IQBAL AHMAD and KENDALL, JJ:—The question that arises for consideration in the present appeal is whether an appealable decree against which an appeal has not been filed becomes final on the expiry of the period of limitation prescribed for filing an appeal from that decree, or does the decree become final on the very day on which it was passed? Both the courts below have held that a decree capable of being appealed against does not become final till the expiry of the period prescribed for filing an appeal against that decree.

The facts that led to the present appeal are as follows:—Ram Harakh Pande, the respondent, obtained a decree for pre-emption against the appellants on the 16th of March, 1921. The decree in favour of the respondent was conditional on the payment by him of the purchase-money within 30 days from the date of the decree becoming final. The appellants appealed against that decree and the first appellate court, on the 30th of June, 1921, dismissed the appeal. The purchase-money was deposited by the respondent more than 30 days after the 30th of June, 1921, viz. on the 1st of August, 1921. After depositing the purchase-money, the respondent applied for delivery of possession of the property pre-empted by him, and delivery of possession was made over to him on the 30th of June, 1922. On the 5th of November, 1923, the appellants filed an application for restitution under section 144 of the Code of Civil Procedure, and asserted that the decree of the trial court became final on the 30th of June, 1921,

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that is, on the date on which the first appellate court dismissed the appeal filed by the appellants. The respondent maintained that the decree of the trial court that was affirmed by the first appellate court did not become final till after the expiry of the period allowed for filing an appeal from the decree of the first appellate court, i.e. till after the expiry of 90 days from the 30th of June, 1921, and, therefore, the purchase-money had been deposited by him well within time.

In our judgement the view of law taken by the courts below is perfectly correct.

We are not unaware of the decisions in *Hingan Khan v. Ganga Prasad* (1) and *Narain Das v. Lachman Singh* (2), but with all respect we are unable to agree with those decisions.

It appears to us that an appealable decree can only become final when the time allowed for filing an appeal against that decree has expired without an appeal being filed. Till then the decree is capable of being challenged by an appeal, and, therefore, during that period it cannot be said that the decree has become final, or, in other words, has become unassailable. This was the view taken by this Court in the cases of *Disa Singh v. Jaula Singh* (3), *Shaikh Ewaz v. Mokuna Bibi* (4), *Ram Sahai v. Gaya* (5), *Gopal Das v. Mamma Kunwar* (6) and *Fazal Husain v. Fazal-uddin* (7). We are in complete agreement with the view of law taken in the cases noted above and accordingly we dismiss the appeal with costs.

Appeal dismissed.

(1) (1876) I.L.R., 1 All., 293.

(3) Weekly Notes, 1881, p. 165.

(5) (1884) I.L.R., 7 All., 107.

(2) (1880) I.L.R., 3 All., 135.

(4) (1876) I.L.R., 1 All., 132.

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