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the explanation to section 20 provides that debt includes money payable under a decree or order of the court.

In our judgment there is no force in this appeal. The appeal is accordingly dismissed with costs.

Before Sir John Thom, Chief Justice, and Mr. Justice Ganga Nath

CHANDRIKA PRASAD (PLAINTIFF) *v.* BHAGWATI DEVI (DEFENDANT)*

1938 *November*, 23

Civil Procedure Code, order XX, rule 14—Decree in pre-emption suit—Decree not directing the deposit of costs awarded to the defendant—Deposit of purchase money less the costs awarded to the plaintiff—Sufficient compliance with the decree—No equitable grounds compelling the deposit of the costs awarded to defendant—Civil Procedure Code, order XXI, rule 19(b)—Set off.

In a suit for pre-emption the decree passed by the appellate court directed the plaintiff to deposit the purchase money within a certain time; it also awarded Rs.169 as costs to the plaintiff and Rs.92 as costs to the defendant, but it did not direct the plaintiff to deposit, together with the purchase money, the Rs.92 costs awarded to the defendant. The plaintiff deposited, within time, the purchase money less the Rs.169 costs awarded to him: *Held*, that the deposit was in compliance with the decree, and valid.

It is well established law that in a pre-emption suit the plaintiff is entitled to deduct, from the amount he is directed to deposit, the amount of the costs awarded to him.

The decree in a pre-emption suit should, according to order XX, rule 14 of the Civil Procedure Code, direct the plaintiff to deposit, along with the purchase money, any costs which may have been awarded to the defendant; but if the decree contains no such direction the plaintiff is not bound to deposit such costs, upon any grounds of equity.

Order XXI, 19 (*b*) is not applicable to deposits in pre-emptions suits but to set-off in the case of a decree in execution; it can not, therefore, be invoked to compel the plaintiff to set off the costs awarded to him against the costs payable by him.

Dr. *S. N. Sen* and Mr. *B. Malik*, for the appellant.

Mr. *P. L. Banerji*, for the respondent.

*Appeal No. 50 of 1937, under section 10 of the Letters Patent.

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THOM, C. J., and GANGA NATH, J.:—This is a plaintiff's appeal against the order of a learned single Judge of this Court.

The appeal arises out of a pre-emption suit. On the 22nd of May, 1932, the plaintiff's suit was decreed. The plaintiff in the decree was directed to deposit within one month the sum of Rs.2,150, and Rs.186-4-0 in name of costs were awarded to him under the decree.

On the 20th of June, 1932, the plaintiff deposited Rs.2,150. On the 1st of July, 1932, he applied for possession and he further prayed that he might be permitted to realise the amount awarded to him in name of costs by attaching the sum deposited.

The defendant appealed against the order of the trial court. The appeal was decided on the 11th of November, 1933. The appellate court decreed the plaintiff's suit conditionally upon his depositing a sum of Rs.2,650 within three months. The court further awarded the plaintiff Rs.169-10-0 and to the defendant Rs.92-7-0 in name of costs.

The decree did not comply strictly with the provisions of order XX, rule 14 of the Civil Procedure Code in respect that the plaintiff was not directed to deposit the costs awarded against him.

On the 9th of February, 1934, the sum of Rs.330-6-0 was deposited by the plaintiff, that is Rs.500 less the sum of Rs.169-10-0 awarded to the plaintiff as costs. The plaintiff did not allow for the award of costs made in favour of the defendant. In these circumstances on the 10th of March, 1934, the defendant preferred an application in the execution court claiming that inasmuch as the plaintiff had not deposited the full Rs.500 within the time allowed by the court the suit should stand dismissed. She further claimed possession over the property in dispute and mesne profits. The execution court and the lower appellate court held that the plaintiff had complied with the terms of the decree passed by

the lower appellate court and dismissed the defendant's application to have the suit dismissed and claims for possession and mesne profits. The learned single Judge before whom the matter came in second appeal has reversed the order of the lower appellate court and has remanded the case to the court of first instance to be disposed of according to law.

The question for consideration in this appeal is whether in law the plaintiff must be taken to have complied with the terms of the decree of the 11th of November, 1933.

Now, by the terms of that decree the plaintiff was directed to deposit within three months the sum of Rs.500. This admittedly he did not do. On the other hand it is well established law that in a pre-emption suit the plaintiff is entitled to deduct, from the amount he is directed to deposit, the amount of the costs awarded to him. This principle was first approved by this Court in the case of *Ishri* v. *Gopal Saran* (1). That decision has been subsequently followed in *Ram Lagan Pande* v. *Muhammad Ishaq Khan* (2) and in *Ali Husain* v. *Amin Ullah* (3).

Learned counsel in these circumstances contended that as the law stood in the year 1933 the plaintiff had fully complied with the terms of the decree of the 11th of November, 1933, in regard to the amount to be deposited. It was contended by learned counsel for the respondent on the other hand that if in equity the plaintiff was entitled to deduct from the amount directed to be deposited, the amount of costs awarded to him he should in equity have included in the amount deposited the amount of costs awarded to the respondent. In other words, that in arriving at the amount which the plaintiff was bound to deposit the respondent should have been credited with the sum of Rs.92-7-0. Learned counsel for the respondent in support of his contention

(1) (1884) I.L.R. 6 All. 351. (2) (1919) I.L.R. 42 All. 181.
(3) (1912) I.L.R. 34 All. 596.

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referred to the provisions of order XXI, rule 19, sub-rule (*b*). In a sense this provision lends support to the argument for the respondent. On the other hand, in our opinion, it is not strictly applicable. The provision refers not to deposits in pre-emption suits but to set off in the case of a decree in execution, in regard to which different considerations arise.

No doubt the plaintiff would have acted reasonably and equitably if in making the deposit he had allowed for the sum awarded to the respondent in name of costs. Upon the other hand it cannot be said that he failed to comply with the terms of the decree which was of the 11th of November, 1933. He clearly in law was entitled to deduct the amount of the costs awarded to him, namely Rs.169-10-0. He was not bound to give credit to the respondent for the sum of Rs.92-7-0 awarded to the latter. It was open to the respondent to put the decree in the suit, in so far as it related to her costs, into execution. No difficulty was placed in the way of the respondent pursuing her remedy in this ordinary way.

If the plaintiff has failed to act in a way which the courts would consider reasonable and equitable, though not directed so to act by the terms of the decree, is he to be deprived of the fruits of his victory in the pre-emption suit on grounds of equity? We think not. It is one thing to hold that the plaintiff is entitled to deduct from the sum to be deposited under the pre-emption decree the amount of his costs on the ground that such a course is reasonable and equitable; it is an entirely different matter to hold that a plaintiff who has succeeded in a pre-emption suit and is willing and able to deposit what the court directs him to deposit, is to fail in the end of the day because he has not added to the amount directed to be deposited the sum awarded to the defendant in name of costs, when the decree in the suit has not so directed. Such a result in our judgment could not be justified on grounds of equity. It was open to the court,

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in view of the terms of order XX, rule 14, to have directed the plaintiff to deposit the defendant's costs. No doubt the court should have done so in the circumstances. It did not, however, so order, and the plaintiff in fact did comply with the order passed.

Upon the whole matter we are satisfied that the defendant's objection should be dismissed.

We accordingly allow the appeal, set aside the order of the learned single Judge in second appeal, and restore the order of the lower appellate court with costs throughout.

Before Mr. Justice Bennet and Mr. Justice Verma

FATEH (DEFENDANT) *v.* HAR BILAS (PLAINTIFF)*

1938

November, 23

Landlord and tenant—House of agriculturist in the abadi of a village—Rights of the agriculturist and of the zamindar in such house—Customary law—"Abandonment of house"—Usufructuary mortgage.

Under the customary law of these provinces relating to the respective rights of the zamindar and of a ryot occupying under him a house in the village abadi, as laid down in the case of *Sri Girdhariji Maharaj* v. *Chote Lal* (1), the house together with the site reverts to the zamindar when the ryot abandons the house though he may not have left the village; also, the ryot has no more right to make a usufructuary mortgage of the house than he has to make a sale thereof. The principle on which the custom rests is that when a zamindar allows a person to build a house on his land he is entitled to insist that that person and the members of his family alone should occupy the house and that he or they should not be entitled to transfer the house and thus force a stranger on the zamindar.

Mr. *J. Swarup*, for the appellant.

Mr. *Baleshwari Prasad*, for the respondent.

BENNET and VERMA, JJ.:—The suit which has given rise to this appeal was brought by the respondent for

*Second Appeal No. 960 of 1935, from a decree of Raghunath Prasad, Civil Judge of Agra, dated the 14th of February, 1935, reversing a decree of S. M. Ahsan Kazmi, Additional Munsif of Fatehabad, dated the 2nd of August, 1934.

(1) (1898) I.L.R. 20 All. 248.