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[His Lordship next took up the appeals of the various appellants separately and discussed the evidence in each case at length and in the result dismissed all the appeals.]

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan and Mr. Justice Gokaran Nath Misra.

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March, 21.

LAKHPAT SINGH (DECREE-HOLDER-APPELLANT) v. SAT NARAIN SINGH (MINOR) (JUDGMENT-DEBTOR-RESPONDENT).*

Pre-emption—Oudh Laws Act (XVIII of 1876), section 15—Oudh Civil Court rules, rules 579, 580 and 581—Pre-emptor handing over the pre-emption money decreed by order of court to the vendee instead of depositing it in the treasury after the tender had been passed, effect of—Civil Procedure Code (Act V of 1908), section 99, applicability of.

Where a decree for pre-emption was passed on payment of a certain sum of money within a particular time and the pre-emptor within the prescribed time filed a tender in court according to the Oudh Civil Court rules for the deposit of the required sum and after the necessary office report the court passed the tender and ordered the money to be deposited in the treasury but the money was not deposited in the treasury as the court on the application of the vendee ordered the money to be handed over to him and the money was accordingly paid to the vendee who delivered possession of the property to the pre-emptor decree-holder, *held*, that the subsequent order of the court for the money being handed over to the vendee instead of being deposited in the treasury did not alter the original character of the payment which according to the rules of the court was a payment into court within the meaning of section 15 of the Oudh Laws Act.

Held further, that even if the court committed an error of procedure in cancelling the direction of actual payment

* Execution of Decree Appeal No. 73 of 1928, against the decree of Pundit Damodar Rao Kelkar, Subordinate Judge of Rao Bareilly, dated the 25th of September, 1928, setting aside the order of Kuar Ragburaj Bahadur, Munsif Bahman, dated the 17th of May 1928.

into the treasury such an error cannot be allowed to affect the decree-holder prejudicially as no man should suffer by mistake of court. At the worst the order of the court amounts to a mere irregularity in procedure and having regard to section 99 of the Code of Civil Procedure the original order which the court had passed recording complete satisfaction of the decree could not be reversed. *Lattu Singh v. Umrao Singh* (1), *Baiju Singh v. Madho Singh* (2), *Latif-un-nisa v. Achambhit Lai* (3), *Janga Singh v. Lachmi Narain* (4), *Nilkanth v. Mahabir Singh* (5), and *Sheo Ram v. Tula* (6), distinguished. *Ex parte Wier* (7), and *Attorney-General v. Beech* (8), relied on.

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The case was originally heard by MISRA, J., who referred it to a Bench consisting of two Judges. His order of reference is as follows:—

MISRA, J.:—This is an appeal arising out of a pre-emption suit. The facts of the case are that a suit for pre-emption was brought by the appellant, Lakhpat Singh, which was decreed on the 23rd of August, 1927, by the court of the Munsif of Dalmau, district Rae Bareli. The decree was to the effect that the plaintiff was to pay into court a sum of Rs. 700 within three months for payment to the vendee and in default the suit was to be dismissed. On the 20th of October, 1927, the plaintiff applied in court to deposit the money and filed along with his application a tender for the said amount. On the next day, i.e., the 21st of October, 1927, the vendee namely the respondent Sat Narain Singh, who is a minor and was under the guardianship of his father Jaddu Singh, applied to the court that he had delivered possession to the plaintiff and that he was willing to take the money to which he was entitled under the decree for pre-emption. Thereupon the court recorded the statement of the decree-holder-appellant Lakhpat Singh and of Jaddu Singh, guardian of the minor

(1) (1902) 5 O. C., 118.

(2) (1904) 8 O. C., 57.

(3) (1911) 14 O. C., 85.

(4) (1920) 23 O. C., 254.

(5) (1923) 26 O. C., 345.

(6) (1926) 3 O. W. N., 275.

(7) (1871) L. R., 6 Ch. Ap., 875.

(8) (1898) 2 Q. B. D., 147.

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defendant. Lakhpat Singh, the decree-holder stated before the court that he had got possession and that the defendant be ordered to take money from him. The guardian stated that he was willing to accept the pre-emption money due to the minor defendant who was his son and lived jointly with him. The court after recording the statements of the parties as indicated above ordered on the same date, i.e., the 21st of October, 1927, that the appellant decree-holder should pay money to Jaddu Singh guardian of the respondent, and the original sale deed, which had been filed by the defendant and was on the record, should be given to the appellant. Jaddu Singh received the pre-emption money and filed a certificate to that effect in court on the same date, namely, the 21st of October, 1927. The certificate was duly verified by the court and forms part of the record.

It appears subsequently a bad advice was given to the defendant-respondent and an application was filed by Rampal Singh, his grandfather, on the 14th of February, 1928. In that application a complaint was made that money had been improperly taken by Jaddu Singh outside the court without offering sufficient security and that his name should, therefore, be removed from the guardianship of the minor, and that the applicant's name should be substituted in his place.

The learned Munsif dismissed this application on the 23rd of March, 1928, on the ground that Jaddu Singh, who had been appointed as guardian *ad litem* of the respondent was alive and could not be discharged. After this three applications were filed in the court of the same Munsif, one by Jaddu Singh himself, the second by Rampal Singh, and the third by the respondent under the guardianship of Rampal Singh. All these applications are dated the 12th of April, 1928. Jaddu Singh stated in his application

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that he did not want to remain any more as the guardian of his son, the respondent. Rampal Singh said in his application that he was willing to be appointed as guardian of the respondent and should be substituted in place of Jaddu Singh. He further stated in his application that he was willing to return the money paid by the appellant. The respondent in his application stated that the decree had not been strictly complied with and that the appellant's suit should be deemed to have been dismissed. He also offered his willingness to return to the appellant the money paid by him to his guardian Jaddu Singh.

The learned Munsif of Dalman in whose court the decree had been passed in favour of the appellant and where all these applications had been filed held by his order dated the 17th of May, 1928, that the decree had been sufficiently complied with and in this view of the case dismissed all the three applications.

An appeal was lodged against this order of the learned Munsif to the court of the Subordinate Judge, Rae Bareli, who by his order dated the 25th of September, 1928, reversed the order passed by the Munsif holding that the decree expressly provided that money was to be paid by the appellant into court and it could not be considered to have been sufficiently complied with when the money had not been deposited in court, but had been paid to the guardian of the minor respondent outside the court. The present appeal is against this order of the learned Subordinate Judge.

In appeal it has been contended before me that the learned Subordinate Judge is in error in holding that the decree had not been sufficiently complied with. The argument advanced is to the effect that when the money had been brought by the appellant to court for the purpose of depositing it in court as shown by the application and the tender filed by him on the 20th of October, 1927, and that it had actually been

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paid to the respondent under the order of the court, dated the 21st of October, 1927, the payment having been duly certified in court by the guardian of the respondent, it should be deemed to be a valid payment under the terms of the decree.

On behalf of the respondent it is contended that section 15 of Oudh Laws Act, 1876 was imperative and no payment could be recognized unless it was made into court. It was further pointed out that the decree passed in this case was also to the same effect and the payment made was not in compliance with the terms thereof, and under these circumstances the learned Subordinate Judge had correctly decided that the payment was not in accordance with law.

Reliance was placed on several cases decided by the late court of the Judicial Commissioner of Oudh, which are reported in *Lalta Singh v. Umrao Singh* (1), *Baiju Singh v. Madho Singh* (2), *Latif-un-nisa, Musammat v. Achambhit Lal and another* (3), *Janga Singh v. Lachhmi Narain* (4), *Nilkanth v. Mahabir Singh and another* (5) and *Sheo Ram v. Tula and another* (6). All these cases are mentioned in the judgment of the learned Subordinate Judge. My attention was specially drawn to the case reported in *Baiju Singh v. Madho Singh* (2), which appears to be directly in point.

As the question involved in this appeal is an important one and it is advisable that it should be authoritatively decided I refer this case for decision to a bench of two Judges of this court under provisions of section 14, clause (2) of Act IV of 1925.

Mr. *Hakimuddin*, for the appellant.

Mr. *Raj Bahadur Srivastava*, for the respondent.

(1) (1902) 5 O. C., 116.

(3) (1911) 14 O. C., 85.

(5) (1923) 26 O. C., 345.

(2) (1904) 8 O. C., 57.

(4) (1920) 7 O.L.J., 378.

(6) (1926) I.L.R., 1 Luck., 158-3 O.
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HASAN, AND MISRA, JJ. :—This is an appeal from the order of the Subordinate Judge of Rae Bareli, dated the 25th of September, 1928, reversing the order of the Munsif of Dalmau, dated the 17th of May, 1928. The facts of the case necessary for the disposal of this appeal are as follows :—

The appellant Lakhpat Singh obtained a decree on the 23rd of August, 1927, in a claim for pre-emption against Sat Narain Singh, minor vendee. In the suit for pre-emption Sat Narain Singh's father Jadunath acted as his guardian *ad litem* under the order of the court, and the decree passed in the suit directed that the decree-holder was to pay a sum of Rs. 700 within three months and in default the suit was to stand dismissed. On the 20th of October, 1927, the appellant made an application to the court, which had passed the decree in the pre-emption suit, accompanied with a tender of the sum of Rs. 700. The application stated that the money was required to be deposited into court and that it was hereby being deposited by means of the tender. It further stated that the vendee may be ordered to withdraw the money so deposited and that the applicant might be permitted to enter into possession. The tender together with the application was directed by the court to be accepted by the office and report made in relation thereto. Accordingly the Munsarim of the court filled up the necessary columns of the tender, one of such columns being a direction to the treasury officer to receive the money thereby tendered. This direction was duly signed by the same officer of the court. On the 21st of October, 1927, i.e., the date following, the minor's guardian Jadu Nath Singh made an application to the court concerned that he might be permitted to withdraw the money and in the application also intimated that he had delivered possession to the decree-holder of the pre-empted property. Thereupon the

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Munsif on the same day recorded the statement of Jadu Nath Singh and also of the decree-holder appellant, and passed the order that the money be handed over to Jadu Nath Singh. This order was complied with then and there and the certificate of payment was filed and accepted.

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It would seem from what has been stated above that nothing more remained to be done in the case. After the decree had been obtained, the condition as to the payment of the pre-emption money had been complied with, the possession had been delivered by the vendee to the pre-emptor and the case concluded with this final adjustment. But it was not to be so. The minor's grandfather Rampal Singh appears on the scene and on the 14th of February, 1928, he makes an application to the court which had passed the decree and recorded its final adjustment, stating that the payment to Jadu Nath Singh was not the payment according to law, and that Jadu Nath Singh had obtained the money belonging to the minor without furnishing sufficient security in respect thereof. The application ended with a prayer that Jadu Nath Singh be removed from the position of the guardian of the minor and that the applicant Rampal Singh be appointed guardian in his place. The application was dismissed by the court on the 28th of March, 1928, but even then the things were not allowed to rest. On the 12th of April, 1928, Rampal Singh, the aforementioned, made an application again praying for his appointment as guardian. The application was supported by another application made by Jadu Nath Singh by means of which Jadu Nath Singh expressed his willingness to withdraw from the guardianship and also his readiness to return the money which he had received on behalf of the minor on the 21st of October, 1927. The court again, as was to be expected, dismissed these applications on the 17th of May, 1928.

Rampal Singh then preferred an appeal against the order just now mentioned acting in the capacity of the guardian of his grandson Sat Narain Singh. The appeal was heard by the Subordinate Judge of Rae Bareilly, allowed, and the order of the court of first instance dated the 17th of May, 1928, was reversed. From the order of the learned Subordinate Judge the appeal now being decided by us was preferred.

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The learned Subordinate Judge by his judgment under appeal has held that the deposit of the Rs. 700 made on the 20th of October, 1927, by the pre-emptor decree-holder was not a "payment into court" as required by section 15 of the Oudh Laws Act, 1876, and therefore the decree which the pre-emptor had obtained became void within the meaning of the same section.

We are of the opinion that the judgment of the learned Subordinate Judge is erroneous and should be reversed. In support of the opinion of the learned Subordinate Judge reliance was placed upon a series of decisions of the late Court of the Judicial Commissioner of Oudh and also upon a decision of a Bench of this Court. We shall now briefly refer to those decisions.

Lalta Singh v. Umrao Singh (1). In this case the pre-emption money was paid by means of the decree-holder giving a mortgage of a certain immoveable property in favour of the vendee. The court held that this was not a payment in accordance with the provisions of section 15 of the Act of 1876.

Baiju Singh v. Madho Singh (2). The pre-emptor in this case appears to have made the payment of the pre-emption money directly to the vendee out of court and a certificate in recognition of the fact of payment was filed. Here again the payment was held to be invalid.

(1) (1902) 5 O. C., 116.

(2) (1904) 8 O. C., 57.

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Latif-un-nisa v. Achambhit Lal (1). In proof of the payment by the pre-emptor a receipt acknowledging the payment was filed in the court. The court held this was not a payment according to law.

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Janga Singh v. Lachmi Narain (2). In this case payment made at 6.30 p.m. in the course of the last day fixed by the decree and after the court had risen for that day and at the house of the presiding officer was held not to be a valid payment.

In *Nilkantb v. Mahabir Singh* (3) and *Shco Ram v. Tula* (4) the pre-emptor in making the payment required by the decree had deducted costs which were awarded to him under the same decree. The court held in both these cases that such a payment was not a payment in compliance with the decree.

Having regard to the analysis of the facts in the cases to which we have referred above in this judgment we have no hesitation in holding that not one single decision is applicable to the facts of the present case. As we have already stated the money in the present case was properly tendered into court and the court accepted the tender, and endorsed a direction thereof that the money so tendered was to be received by the Treasury Officer of Rae Bareilly.

Section 15 of the Act of 1876 which is said to have been violated in the present case is as follows:—

“If such purchase-money or amount is not paid into court before it rises on that day, the decree shall become void, and the plaintiff shall, so far only as relates to such sale or mortgage, lose his right of pre-emption over the property to which the decree relates.”

(1) (1911) 14 O. C., 85.
(3) (1923) 26 O. C., 345.

(2) (1920) 23 O. C., 254.
(4) (1926) I. T. R., 1 Luck., 158.
3 O. W. N., 275.

The point for decision is as to whether in the circumstances of this case it can be held that the purchase money was "not paid into court" within the meaning of that section. We must construe those words according to some recognized principle of interpretation. The mode of payment into court must clearly be a matter of rule regulating practice of the court concerned. Sir J. MELLISH, L. J., in delivering the judgment of the court in the case of *Ex parte Wier* (1) said, "We are of opinion that where the construction of the Act is ambiguous or doubtful on any point recourse may be had to the rules which have been made by the Lord Chancellor under the authority of the Act and if we find that in the rules any particular construction has been put on the Act then it is our duty to adopt and follow that construction." To the same effect is the dictum of Lord Justice CHITTY in *Attorney-General v. Beech* (2). "In construing a statute regard must be had to the ordinary rules of law applicable to the subject matter, and these rules must prevail, except in so far that the statute shows that they are to be disregarded and the burden of showing that they are to be disregarded rests upon those who seek to maintain that proposition."

By section 122 of the Code of Civil Procedure, 1908, power is conferred upon the Chief Court of Oudh to make rules regulating their own procedure and the procedure of the civil courts subject to their superintendence and under section 127 of the same Code when such rules have received the approval of the Local Government and have been published in the Local Official Gazette they acquire the same force and effect within the local limits of the courts concerned as if they had been contained in the first schedule of the Code. Such rules were made by the Chief Court

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(1) (1871) L. R., 6 Ch. Appl., 975 (2) (1898) 2 Q. B. D., 147 (155).
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approved of by the Local Government and duly published. One of such rules is rule 579. We shall now quote a portion of that rule: "Payment of money into court shall ordinarily be made by means of a tender upon a printed triplicate form The applicant shall enter in English or in the court vernacular the particulars required in columns 1 to 4 of the triplicate form of tender and shall affix to one of the tenders, herein called the 'original tender', the court-fee stamp, if any, required by law. The applicant shall then hand over the tender to the Munsarim."

The tender in the case before us is strictly in accordance with the rule just now quoted. The procedure adopted in this case after the tender was filed in court was again in conformity with the following rule 580:—"The Munsarim shall then call upon the official in charge of the record of the case for an office report as to whether the amount and nature of the payment tendered and the number of the suit, if any, are correct, and whether the payment is due from the person on whose account it is tendered. Any necessary corrections shall be made, and the Munsarim shall then sign the tender prior to the order for receipt of payment being passed."

Then follows rule 581, a portion of which need be quoted here: "The order to receive payment shall be prepared in the office of the court and shall be enclosed upon the duplicate and triplicate forms of the tender, and shall run in the name of the treasury or Receiving Officer as prescribed in rules 572 and 573. The order shall be signed by the presiding Judge for all amounts payable under heads of account (1) and (2)."

The order to receive payment in this case was signed by the presiding Judge, i.e., the Munsif. All

this was done and completed on the 20th of October, 1927. Before any further steps could be taken in the matter of the tender it appears that on the day following as already stated the Munsif at the request of the parties and on being satisfied that everything was above board ordered the money which had been duly tendered on the previous day to be received by the minor's guardian from the hands of the pre-emptor decree-holder instead of resorting to the cumbersome process of the money being first actually placed into the treasury and then withdrawn from there under the order of the court by the decree-holder. Substantially the order of the Munsif meant the cancellation of the direction of payment into the treasury and substitution in place of it of actual payment into the hands of the minor's guardian. This order of the Munsif, however, did not alter the original character of the payment which according to the rules of the court was a payment into court. But even if we hold which we do not, that the Munsif committed an error of procedure in cancelling the direction of actual payment into the treasury, such an error cannot be allowed to affect the decree-holder prejudicially. No man should suffer by mistake of court. At the worst the Munsif's order as we have just now stated may be an error but it amounts to a mere irregularity in procedure and having regard to section 99 of the Code of Civil Procedure the original order which he had passed as recording the complete satisfaction of the decree in terms thereof cannot be reversed.

We accordingly allow this appeal, set aside the order of the lower court and restore the order of the court of first instance with costs in favour of the appellant of the three courts.

Appeal allowed.

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