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reasons for this are that we are satisfied that the appellant is not quite normal mentally, and that his act was not premeditated, and was committed in a moment of extreme excitement. While, therefore, we maintain the conviction, we reduce the sentence from one of death to one of transportation for life. Apart from this alteration in the sentence, the appeal is dismissed.

Appeal partly allowed.

MISCELLANEOUS CIVIL.

Before Mr. Justice Muhammad Raza and Mr. Justice Bisheshwar Nath Srivastava.

1931 September, 30.

BANKEY BEHARI LAL AND ANOTHER (DEFENDANTS-APPELLANTS) *v.* ABDUL RAHMAN AND OTHERS (PLAINTIFFS-RESPONDENTS).*

Civil Procedure Code (Act V of 1908), order XLVII, rules 4 and 7 and order XLIII, rule 1(w)—Review—Appeal against an order granting a review of judgment, grounds of—Order rejecting an application in chambers without hearing the applicants—Review of the order granted—Court, if justified in granting review of that order—Appeal against order granting review, when lies—Civil Procedure Code (Act V of 1908), section 151—Application under section 151 of the Code of Civil Procedure on the ground that counsel had no power to enter into a compromise on behalf of the applicant and the proceedings relating to the compromise decree were null and void—Court, if competent to cancel its proceedings and direct retrial—Pre-emption—Oudh Laws Act (XVIII of 1876), section 15.

Held, that an appeal against an order granting an application for review of judgment must be restricted to one or other of the grounds set forth in order XLVII, rule 7 of the Code of Civil Procedure. Order XLIII, rule 1(*w*) gives a right of appeal against orders granting an application for review but does not specify the grounds on which the appeal can lie. Those grounds have been specified in order XLVII, rule 7.

*Miscellaneous Appeal No. 51 of 1930, against the order of S. Shaukat Husain, Subordinate Judge of Unao, dated the 25th of September, 1930.

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The general right of appeal given in order XLIII, rule 1(*w*), must therefore be held to be subject to the specific provisions of Order XLVII, rule 7 as regards the grounds on which an appeal can lie. *Daso Keshav Panchbhavi* v. *Karbasappa Kariyappa Mudhol* (1), dissented from. *Hari Charan Saha* v. *Baran Khan* (2), *Srinivasa Ayyangar* v. *The Official Assignee, Madras* (3), *Narain Das* v. *Chiranji Lal* (4), *Lan Tin Ngan* v. *Ma Mya Kyin* (5), and *Sikandar Khan* v. *Baland Khan* (6), relied on.

Where an application for review against an order rejecting an application under section 151 of the Code of Civil Procedure is based on the ground that the court had disposed off that application in chambers without giving the applicants a hearing, *held*, that the application for review was not in contravention of rule 4 of order XLVII and the case did not fall within the provisions of sub-clause (*b*) of Order XLVII, rule 7, and the order granting such review application was not appealable as none of the grounds specified in Order XLVII, rule 7, existed.

When the order rejecting an application under section 151 of the Code of Civil Procedure shows on the face of it that it was passed in chambers and in the absence of the applicants there is clearly a mistake apparent on the face of the record and at any rate that is a sufficient reason within the meaning of those words as used in Order XLVII, rule 1, which entitles the Court to grant the review of its order.

The word "decree" as used in section 15 of the Oudh Laws Act must be read as meaning the final decree passed in the case. It would be contrary to sound principle to compel a plaintiff to pay the amount decreed by the trial court and to subject him to the penalty of losing his right of pre-emption if he fails to do so when he has a right to question the correctness of the amount made payable by the trial court, by means of an appeal against it. Further, where the plaintiffs attack the validity of the decree and contend that it is null and void against them, it would be most unreasonable to hold that they have lost their right of pre-emption on account of their failure to make the deposit required by the decree in question. *Imam Din Khan* v. *Adbul Sattar Khan* (7), dissented from.

(1) (1925) 27 Bom., L.R., 1446.
(2) (1914) I.L.R., 41 Calc., 746.
(3) (1927) I.L.R., 50 Mad., 891.
(4) (1924) I.L.R., 47 All., 361.
(5) (1929) I.L.R., 7 Rang., 187.
(6) (1927) I.L.R., 8 Lah., 617.
(7) (1923) 11 O.L.J., 74.

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Where a suit is compromised and a decree is passed in favour of the plaintiffs on certain conditions, it is open to the latter to file an application under section 151 of the Code of Civil Procedure alleging that they had not agreed to the compromise on the conditions entered in the Court's proceedings, that their counsel was not empowered to enter into any compromise on their behalf and that the proceedings relating to the compromise were irregular and contrary to law and in such a case the court is competent to cancel the proceedings and direct the trial of the suit to be proceeded with in the ordinary course. *Devendra Nath Sarkar* v. *Ram Rachpal Singh* (1), and *Mohammad Raza* v. *Ram Saroop* (2), relied on.

Mr. *Radha Krishna*, for the appellants.

Mr. *Zahur Ahmad*, for the respondents.

RAZA and SRIVASTAVA, JJ. :—The facts which have led up to this appeal and application for revision may be briefly stated :—

On the 5th of January, 1929, two persons, Abdul Rahman and Sabit Ali, instituted a suit for pre-emption in respect of a sale deed for Rs. 75,000. They alleged that the real price paid was only Rs. 58,000 and claimed a decree for pre-emption on payment of that amount. On the 4th of September, 1929, the learned Subordinate Judge recorded a proceeding to the following effect :—

> "The parties have agreed to compromise the case in the following way. The defendant No. 3 is given up. Mr. Maseehuddin states the terms as below, "The defendants Nos. 1 and 2 agree that if the plaintiffs deposit a sum of Rs. 75,000 on account of the price of the property in dispute and a sum of Rs. 2,000 on account of the costs of the suit and other incidental expenses, that is in all Rs. 77,000 within ten days, by the 12th of November, 1929, a decree for pre-emption be passed in favour of the

(1) (1926) 3 O.W.N., 277.

(2) (1929) 6 O.W.N., 604, F.B.

plaintiffs in respect of the property in dispute. In case of default in the payment of the money, the suit will be dismissed with costs on parties. The plaintiffs have agreed to the above terms. Mr. Bajpai says that this is correct. The parties agree that in case of deposit the plaintiffs will get no costs of the suit."

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"The suit for pre-emption is therefore decreed in terms of the above compromise under rule 1, Order XX, rule 3, Order XXIII, and rule 14, Order XX, schedule I of the Code of Civil Procedure."

The pre-emption money was not deposited by the 12th of November, 1929, as directed by the decree. On the 20th of November, 1929, Abdul Rahman and Sabit Ali filed an application under section 151 of the Code of Civil Procedure alleging that they had not agreed to the compromise on the conditions entered in the Court's proceedings, dated the 4th of September, 1929, that their counsel Mr. Maseehuddin was not empowered to enter into any compromise on their behalf and that the proceedings relating to the compromise were irregular and contrary to law and prayed that the aforesaid proceedings be cancelled, and that the trial of the suit should be proceeded with in the ordinary course. On the same day the learned Subordinate Judge endorsed on this application an order calling for an office report to be put up "the day after tomorrow". After receipt of the office report he took up the application in his chambers on the 22nd of November, 1929, and dismissed it summarily on the ground that section 151 of the Code of Civil Procedure did not apply. Six days later, on the 28th of November, 1929, the plaintiffs made an application for review of the order dated the 28th of November, 1929. In this

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application they complained against the court dismissing the application in chambers without giving them a hearing and contended that the court was wrong in holding that section 151 was not applicable.

The learned Subordinate Judge issued notice of this application to the opposite party but before it could be taken up for hearing, he was transferred and the application was heard by his successor, Mr. Khurshed Husain, who on the 25th of September, 1930, granted the application for review as well as the application under section 151 of the Code of Civil Procedure, set aside the decree dated the 4th of September, 1929, and ordered the suit to be restored to its original number and to be proceeded with from the same stage at which it was left on the date when the decree was passed on foot of the compromise in question. The defendants aggrieved by this order of Mr. Khurshed Husain have come to this Court. Miscellaneous Appeal No. 51 of 1930 is directed against the order under Order XLVII, rule 4, granting the application for review and the revision application No. 32 of 1931 has been made against the order granting the application under section 151 of the Code of Civil Procedure.

The first question which requires determination in the appeal is whether the defendants appellants have an unrestricted right of appeal against the order granting the application for review or whether the right of appeal must be restricted to the grounds set forth in Order XLVII, rule 7 of the Code of Civil Procedure. It has been contended on behalf of the appellants that Order XLVII, rule 1(*w*), allows an appeal against "an order under rule 4 of Order XLVII, granting an application for review" and does not impose any restriction as regards the grounds which the appellant is entitled to urge in support of his appeal. We are of opinion that the provisions of Order XLIII, rule 1,

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clause (*w*), must be read with the provisions of Order XLVII, rule 7(1) of the Code. This rule provides as follows :—

"An order of the court rejecting the application shall not be appealable; but an order granting an application may be objected to on the ground that the application was—

(*a*) in contravention of the provisions of rule 2,

(*b*) in contravention of the provisions of rule 4, or

(*c*) after the expiration of the period of limitation prescribed therefor and without sufficient cause. Such objection may be taken at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit."

It has been argued that this rule does not lay down any prohibition against the appeal being maintained on grounds other than those specified therein. This is no doubt true. But according to the well recognized canons of interpretation of statutes, we should try to reconcile any apparent inconsistencies and should give preference to a construction which avoids making any provision superfluous. When the Legislature uses language permitting an appeal on certain specified grounds, it clearly implies that the appeal is limited to the grounds so specified. Order XLIII, rule 1(*w*), gives a right of appeal against orders granting an application for review but does not specify the grounds on which the appeal can lie. Those grounds have been specified in Order XLVII, rule 7. The general right of appeal given in Order XLIII, rule 1(*w*), must therefore be held to be subject to the specific provisions of Order XLVII, rule 7, as regards the grounds on which an appeal can lie. Reliance has been placed by the

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learned counsel for the appellants on a decision of the Bombay High Court in *Daso Keshav Panchbhavi* v. *Karbasappa Kariyappa Mudhol* (1) in support of his argument. The decision does support the appellants' contention, but with all respect we find ourselves unable to agree with that decision. Except for this one solitary ruling of the Bombay High Court, the decisions of all the other High Courts are against the contention of the appellants—Vide *Hari Charan Saha* v. *Baran Khan* (2), *Srinivasa Ayyangar* v. *The Official Assignee, Madras* (3), *Narain Das* v. *Chiranji Lal* (4), *Lan Tin Ngan* v. *Ma Mya Kyin* (5), and *Sikandar Khan* v. *Baland Khan* (6). The entire case law on the subject has been reviewed in the last mentioned decision of the Lahore High Court. Thus it will be seen that there is an overwhelming weight of authority in support of the view that an appeal against an order granting an application for review of judgment must be restricted to one or other of the grounds set forth in Order XLVII, rule 7 of the Code of Civil Procedure. We are in entire agreement with the view taken in these cases.

Next it was contended that even if the appeal must be confined to the grounds specified in Order XLVII, rule 7, sub-clause (1), the case fell within the provisions of sub-clause (*b*) of that rule and that the appellants were therefore entitled to relief on that ground. The argument is that the application made by the plaintiffs was in contravention of the provisions of Order XLVII, rule 4. In order to support this argument the learned counsel for the appellants wanted to make out that the application for review was based on the ground of discovery of new matter and that there was no strict proof of this allegation as required by Order XLVII, rule 4, sub-clause (*b*). We are of opinion that this argument is not well founded. The

(1) (1925) 27 Bom., L.R., 1446.
(2) (1914) I.L.R., 41 Calc., 746.
(3) (1927) I.L.R., 50 Mad., 891.
(4) (1924) I.L.R., 47 All., 361.
(5) (1929) I.L.R., 7 Rang., 187.
(6) (1927) I.L.R., 8 Lah., 617.

application for review is based mainly on the ground that the learned Subordinate Judge had disposed of it in his chambers without giving the applicants a hearing. This was also the main ground which influenced his successor in granting the application. The application does mention the fact that the learned Subordinate Judge was wrong in observing that section 151 of the Code of Civil Procedure did not apply and that this view was contrary to a decision of the Oudh Chief Court. Even assuming that the reference to the decision of the Chief Court constitutes a new matter within the meaning of those words as used in this rule, there is no allegation that the said ruling was not within the knowledge of the applicants when the order was passed. We are therefore satisfied that there is no question of the application being in contravention of rule 4 of Order XLVII, and none of the grounds of appeal specified in Order XLVII, rule 7, exist in the case.

The learned counsel for the appellants realizing the weakness of his position as regards the maintainability of the appeal, requested us to treat the appeal as an application for revision against the order granting the review. In view of the fact that there was no decision of this Court as regards the scope of an appeal under Order XLIII, rule 1(*w*), we thought it fit to grant the request. The learned counsel for the appellants tried to support it as an application for revision on the ground that none of the grounds for review laid down in Order XLVII, rule 1, were made out in the case and that the learned Subordinate Judge therefore acted without jurisdiction in granting the application. This contention also has no substance. It was the duty of the learned Subordinate Judge to hear the applicants in support of the application before he dismissed it. The order endorsed at the back of the application shows on the face of it that it was passed in chambers and in the absence of the applicants.

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There is therefore clearly a mistake apparent on the face of the record. At any rate this was a sufficient reason within the meaning of those words as used in Order XLVII, rule 1, which entitled the Court to grant the review of its order.

Lastly it was contended that the plaintiffs lost their right of pre-emption on account of their failure to make the deposit within the time allowed by the decree and the application for review made after expiry of the period fixed for making the deposit was incompetent. Reliance has been placed upon the provisions of sections 14 and 15 of the Oudh Laws Act (XVIII of 1876). These sections run as follows :—

"14. If the Court find for the plaintiff the decree shall specify a day on or before which the purchase money or the amount to be paid to the mortgagee shall be paid."

15. 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.

We are of opinion that the word "decree" as used in section 15 must be read as meaning the final decree passed in the case. If we accept the contention of the appellants it would lead to absurd results. It would also be contrary to sound principle to compel a plaintiff to pay the amount decreed by the trial court and to subject him to the penalty of losing his right of pre-emption if he fails to do so when he has a right to question the correctness of the amount made payable by the trial court, by means of an appeal against it. If a plaintiff in a position such as this is unsuccessful in his appeal and the appellate court refuses to extend the time fixed for payment, the position in that case

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would be different. One can easily conceive of a case in which a plaintiff is prepared to pre-empt the property on payment of what he alleges to be the market value but is not prepared to pay more. If the trial court requires him to pay more than the amount which he is prepared to pay, then on the construction contended for by the appellants, the plaintiff must perforce pay this amount in order that he may not lose his right of pre-emption, if the period fixed for payment happens to expire before the appeal is filed. If the argument is carried to its logical conclusion then if the plaintiff has failed to appeal before the date fixed for deposit, he should lose his right of pre-emption if he does not make the necessary deposit on the date fixed by the trial court in spite of his appeal against the decree of the first court being pending. Even the learned counsel for the appellants is not prepared to press his argument to this length. Furthermore the plaintiffs in the present case attack the validity of the decree and contend that it is null and void against them. In such circumstances it would be most unreasonable to hold that they have lost their right of pre-emption on account of their failure to make the deposit required by the decree in question. The construction contended for by the appellants is supported by a decision of the late Court of the Judicial Commissioner of Oudh in *Imam Din Khan* v. *Abdul Sattar Khan* (1). We regret we cannot see our way to accept this decision as correct and must respectfully dissent from it.

Next as regards the application for revision No. 32 of 1932. The learned counsel frankly conceded that he was not in a position to question the correctness of the order passed under section 151, the view taken by the learned Subordinate Judge being fully supported by decisions of this Court in *Devendra Nath Sarkar* v. *Ram Rachpal Singh* (2) and *Mohammad Raza* v. *Ram Saroop* (3).

(1) (1923) 11 O.L.J., 74. (2) (1926) 3 O.W.N., 277.
(3) (1929) 6 O.W.N., 604 F.B.

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The result therefore is that the order of the lower court is correct and the appeal and the application for revision must fail and are dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL.

1931 September, 30.

Before Mr. Justice Muhammad Raza and Mr. Justice H. G. Smith.

BABU SINGH AND OTHERS (PLAINTIFFS-APPELLANTS) *v.* RAMESHWAR BAKHSH SINGH AND ANOTHER (DEFENDANTS-RESPONDENTS).*

Hindu law—Widow's power of alienation—Alienation by Hindu widow—Gift by a widow of her husband's estate—Reversioners giving consent to the alienation and receiving consideration for giving the consent—Gift, if binding on the consenting reversioners and persons claiming through him.

Held, that where an alienation by way of gift by a Hindu widow of property forming part of her husband's estate is consented to by the next presumptive male reversioner, who receives consideration for giving such consent or has benefited by the transaction, the transaction is binding on the consenting reversioner and persons claiming through him, if he succeeds to the estate after the death of the widow. *Ramgouda Annagouda Patil* v. *Bhausaheb* (1), *Bijoygopal Mukerji* v. *Srimati Krishna Mahishi Devi* (2), *Jumna Kuar* v. *Madari Singh* (3), *Gaya Din Singh* v. *Madho Singh* (4), *Bajrangi Singh* v. *Manokarnika Bakhsh Singh* (5), *Rangasami Gounden* v. *Nachiappa Gounden* (6), *Raja Madhu Sudan Singh* v. *Rooka* (7), *Fateh Singh* v. *Thakur Rukmini Ji Maharaj* (8), *Akkawa* v. *Sayad Khan* (9), *Ramakottayya* v. *Viraraghavayya* (10), relied on. *Bindeshuri Singh* v. *Har Narain Singh* (11), distinguished and *Hari Bakhsh* v. *Babu Lal* (12), referred to.

*First Civil Appeal No. 72 of 1930, against the decree of Dr. Chaudhri Abdul Azim Siddiqi, Additional Subordinate Judge of Lucknow, dated the 28th of May, 1930.

(1) (1927) L.R., 54 I.A., 396.
(2) (1907) I.L.R., 34 Calc., 329: L.R., 34 I.A., 87.
(3) (1927) 4 O.W.N., 903.
(4) (1927) 4 O.W.N., 1101.
(5) (1909) 35 I.A., 1: I.L.R., 30 All., 1.
(6) (1918) L.R., 46 I.A., 72: I.L.R., 42 Mad., 523.
(7) (1897) L.R., 24 I.A., 164.
(8) (1923) I.L.R., 45 All., 339.
(9) (1927) I.L.R., 51 Bom., 475.
(10) (1928) I.L.R., 52 Mad., 556.
(11) (1929) 6 O.W.N., 233.
(12) (1924) 22 A.L.J., 254 (P.C.).