

decree, nor the Court adjudicated upon it. The right was left open to be adjudicated upon when occasion arose in the future for such an adjudication.

We accordingly dismiss this appeal with costs.

Appeal dismissed.

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SHEIKH
MOHAMMAD
ABDUL
AHAD
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ARJUN
NATH

REVISIONAL CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava
and Mr. Justice J. J. W. Allsop*

ABDUL RAHMAN (PLAINTIFF-APPLICANT) *v.* BANKE BEHARI
LAL AND ANOTHER (DEFENDANTS-OPPOSITE PARTY)*

1933
October, 16

*Civil Procedure Code (Act V of 1908), section 148—Pre-emption
decree—Court's power to extend the time fixed in a pre-emption
decree.*

Where the plaintiff fails to deposit the money within the time prescribed in the decree in a pre-emption suit the Court has no jurisdiction to extend the period fixed for payment in the pre-emption decree. Unless empowered by some specific provision of law to do so, the Court cannot under section 148 of the Code of Civil Procedure enlarge the time fixed by a decree. *Abu Muhammad Mian v. Mukut Pertap Narain* (1), and *Behari Pandey v. Ramanand Pandey* (2), dissented from. *R. M. P. R. M. M. Subramaniam Chettiar v. K. S. Subbiah Ayyar* (3), and *Balgobind v. Sheo Kumar* (4), distinguished. *Naik Ram v. Bhagwan Chand* (5), and *Sajjadi Begam v. Dilawar Husain* (6), referred to. *Suranjan Singh v. Ram Bahal Lal* (7), *Dharamaraja Ayyar v. K. G. Srinivasa Mudaliar* (8), *Hasibunissa v. Mahmuddunnisa* (9), *Kaniz Kubra v. Bande Husain* (10), *Jangu Singh v. Lachhmi Narain* (11), and *Iahi Raza Khan v. Taiba Begam* (12), relied on.

Mr. *Zahur Ahmad*, for the applicant.

Mr. *B. K. Dhaon*, for the opposite party.

SRIVASTAVA and ALLSOP, JJ.:—This is an application for revision of an order, dated the 19th of August,

*Section 115, Application No. 119 of 1932, against the order of S. Khurshed Husain, Subordinate Judge of Unao, dated the 19th of August, 1932.

(1) (1916) 1 P.L.J., 92.

(2) (1933) All., 157.

(3) (1933) Mad., 563.

(4) (1924) I.L.R., 46 All., 864.

(5) (1917) 15 A.L.J., 511.

(6) (1918) I.L.R., 40 All., 579.

(7) (1913) I.L.R., 35 All., 582

(8) (1915) I.L.R., 39 Mad., 876.

(F.B.).

(9) (1914) 17 O.C., 377.

(10) (1914) 2 O.L.J., 162.

(11) (1920) 7 O.L.J., 378.

(12) (1921) 9 O.L.J., 53.

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1932, passed by the learned Subordinate Judge of Unao. The facts of the case are that on the 16th of March, 1932, the court passed a decree based on a compromise arrived at between the parties in a pre-emption case decreeing the claim on the plaintiffs depositing the pre-emption money in court within four months. The plaintiffs failed to deposit the money within the prescribed time and applied for one month's extension.

The learned Subordinate Judge relying on the decision of the late Court of the Judicial Commissioner of Oudh in *Hasibunnissa v. Mahmudunnissa* (1) and on a ruling given by one of us sitting as a single Judge in this Court in *Raj Bahadur v. Musammam Bishunatha* (2) held that the Court had no jurisdiction to extend the period fixed for payment in a pre-emption decree. He accordingly rejected the application.

It is contended before us that the decisions relied upon by the learned Subordinate Judge do not lay down the correct law and that the court had jurisdiction to extend the time for payment fixed by the pre-emption decree under section 148 of the Code of Civil Procedure. We are of opinion that the contention is not well founded. Section 148 allows the court discretion for enlargement of time in cases "where any period is fixed or granted by the court for the doing of any act *prescribed or allowed by*" the Code of Civil Procedure. It is clear from the terms of the section that it applies only where time is fixed for the doing of any act prescribed or allowed by the Code of Civil Procedure. The words italicized by us seem to be quite inappropriate where the time is prescribed or allowed for the doing of an act by a decree passed in a suit. After a decree has once been passed, the court becomes *functus officio* and is not competent to alter its terms except on an application for review or in the case of clerical or arithmetical mistakes, by means of an order under section 152 of the Code of Civil Procedure. It is also, we think, worthy

(1) (1914) 17 O.C., 377.

(2) (1928) 5 O.W.N., 890.

of note that in certain cases for instance in the case of decrees for foreclosure sale or redemption (Order XXXIV, rules 2, 4 and 7), the Legislature expressly empowers the court, upon good cause being shown and upon such terms as it thinks fit, to extend time. No such provision has been made in the case of decrees for pre-emption in Order XX, rule 14, which makes provision for decrees in pre-emption suits. We have, therefore, no hesitation in holding that unless empowered by some specific provision of law to do so, the court cannot under section 148 of the Code of Civil Procedure enlarge the time fixed by a decree.

The learned Counsel for the applicants has relied on the decisions in *Abu Muhammad Mian v. Mukut Pertap Narain* (1), *Naik Ram v. Bhagwan Chand* (2), *Balgobind v. Sheo Kumar* (3), *Behari Pandey v. Ramanand Pandey* (4) and *R. M. P. R. M. M. Subramaniam Chettiar v. K. S. Subbiah Ayyar* (5) in support of his contention.

In *Abu Muhammad Mian v. Mukut Pertap Narain* (1), a Bench of the Patna High Court held that a court passing a decree for pre-emption under Order XX, rule 14 of the Code of Civil Procedure has power under section 148 of the Code to extend the time fixed in the decree for the deposit of the purchase money. The learned Judges do not give any reason for their opinion. They seem to have assumed that section 148 covers a case of this nature. We must respectfully dissent from this decision.

Naik Ram v. Bhagwan Chand (2) was the case of a decree for possession. It was decided by a single Judge of the Allahabad High Court but it has subsequently been overruled in *Sajjadi Begam v. Dilawar Husain* (6).

Balgobind v. Sheo Kumar (3) is a case with peculiar facts based on a mortgage. In that case by some mistake a decree for foreclosure had been drawn up instead of a decree for sale. It was held that the court had power

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(1) (1916) 1 P.L.J., 92.

(3) (1924) I.L.R., 46 All., 864.

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under section 151 of the Code of Civil Procedure, having set aside all the proceedings in the suit, to direct a preliminary decree for sale to be drawn up. It was also remarked that the court had power under section 148 of the Code to extend the time for payment to six months. Reference to section 148 was hardly necessary when Order XXXIV of the Code of Civil Procedure clearly allows a period to be fixed for payment at the time of the passing of the decree and the period being extended from time to time.

Behari Pandey v. Ramanand Pandey (1) is also a case of redemption of a usufructuary mortgage. It was remarked that it was open to the court of first instance to grant extension of time to the mortgagor under Order XXXIV, rule 8, proviso, or section 148 of the Code of Civil Procedure. With all respect, the mention of section 148 does not appear to be well considered.

The case of *R. M. P. R. M. M. Subramaniam Chettiar v. K. S. Subbiah Ayyar* (2) is not one of a decree and is, therefore, not in point.

The view adopted by us is supported by the decisions of the Allahabad High Court in *Suranjan Singh v. Ram Bahal Lal* (3) and *Sajjadi Begam v. Dilawar Husain* (4) and of the Madras High Court in *Dharamaraja Ayyar v. K. G. Srinivasa Mudaliar* (5). There is also a long course of decisions in Oudh to the same effect—see *Hasibunnissa v. Mahmudunnissa* (6), *Musammata Kaniz Kubra v. Bande Husain* (7), *Janga Singh v. Lachhmi Narain* (8) and *Ilahi Raza Khan v. Musammata Taiba Begam* (9).

We are accordingly of opinion that the application has no substance and dismiss it with costs.

Appeal dismissed.

(1) (1933) All., 157.

(2) (1933) Mad., 563.

(3) (1913) I.L.R., 35 All., 582
(F. B.).

(4) (1918) I.L.R., 40 All., 579

(5) (1915) I.L.R., 39 Mad., 876.

(6) (1914) 17 O.C., 377.

(7) (1914) 2 O.L.J., 162.

(8) (1920) 7 O.L.J., 378.

(9) (1921) 9 O.L.J., 53.