LETTERS PATENT APPEAL.

Before Mr. Justice Chevis and Mr. Justice Scott-Smith.

1921

Feb 22.

KAPURIA MAL AND MST. INDI (DECREE-HOLDERS)—*Appellants,*

versus

WALI MUHAMMAD AND OTHERS (JUDGMENT-DEBTORS)—*Respondents.*

Letters Patent Appeal No. 138 of 1920.

Pre-emption—payment of pre-emption price into Court—short by one rupee—decree-holder entitled to Rs. 19-10-0 as costs—whether such payment is sufficient compliance with the terms of the decree.

The appellants obtained a pre-emption decree in their favour by which they were entitled to get possession of the property on paying into Court the sum of Rs. 99 by the 30th of April 1918, and they were also entitled to Rs. 19-10-0 as costs of the suit. By the date fixed they paid into Court Rs. 98, *i.e.* one rupee short of Rs. 99. Subsequently they took possession of the property and realised the full amount of their costs.

Held, that as the decree-holders were entitled to deduct their costs from the decretal amount, the payment of Rs. 98 was really in excess of what they had to pay and the terms of the decree were therefore satisfied. It is immaterial what the decree holders intended to do, the only real test is, whether they have sufficiently complied with the terms of the decree.

Bechai Singh v. *Shami Nath* (1), followed.

Durga Das, for the appellants—The learned Judge in Chambers is wrong in deciding the case on the question of intention. The real question is whether the payment made by me was in law sufficient compliance with the terms of decree. I not only paid into Court the amount due under the decree, but a sum in excess of the decretal amount. I was legally entitled to deduct my costs before I made the payment. My subsequent realisation of full costs though irregular and excessive cannot have a retrospective effect, *Bahadur* v. *Jalal* (2), *Jowala Sahai* v. *Ram Rakha* (3), *Ishri* v. *Gopal Saran* (4), *Parmanand Raot* v. *Gobardhan Sahai* (5), *Ali Husain* v. *Aminullah* (6), *and Bechai Singh* v. *Shami Nath* (1).

(1) (1911) 10 Indian Cases 454.
(2) 70 P. R. 1888.
(3) 78 P. R. 1896.
(4) (1884) I. L. R. 6 All. 351.
(5) (1906) I. L. R. 28 All. 676.
(6) (1912) I. L. R. 34 All. 596.

Obedulla, for the respondents—The appellants never intended to deduct from the pre-emption price the amounts of costs that had been awarded to them. This is clear from their subsequent conduct as they sued out execution for Rs. 19-10-0, the full amount of costs. The net result is that their payment of pre-emption price into Court was short by one rupee—*Kanhaya Lal* v. *Muhammad Shafi Khan* (1).

Appeal from the order passed by Mr. Justice Broadway on the 28th June 1920.

The judgment of the Court was delivered by—

CHEVIS, J.—The facts of this case are as follows : The plaintiffs were given a decree for pre-emption on payment of Rs. 99 on or before the 30th April 1918. They were also allowed Rs. 19-10-0 as costs of the suit. They were admittedly entitled to deduct this sum from the sum of Rs. 99 and they had already paid in Rs. 15 as deposit ; so that all that they had still to pay in was Rs. 64-6-0. On the 23rd April 1918 they paid in a sum of Rs. 83 which was really in excess of what they had to pay. This sum coupled with the sum of Rs. 15 already paid in made a total of Rs. 98. What probably happened was that the plaintiffs intended to pay up the full sum of Rs. 99 and to recover their costs later on, but by a mistake they only paid in Rs. 98. The learned Judge in Chambers notes that they subsequently sued out execution for the sum of Rs. 19-10-0 and holds that as they never intended to deduct from the pre-emption price the amount of costs, their payment does not comply with the terms of the decree. The learned Judge therefore holds that the plaintiffs have forfeited their decree. With this view we are unable to agree. In our opinion it is immaterial what the plaintiffs intended to do, and the only real test is whether they have sufficiently complied with the decree. They certainly in our opinion intended to pay in the whole of the sum mentioned in the decree and to deduct their costs afterwards, so that they intended to comply fully with the terms of the decree. But mere intention to

(1) 141 P. L. R. 1913.

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comply is not sufficient, nor can we regard their intention as any test. The real question is whether, as a matter of fact, they actually complied with the decree. As already pointed out, they were entitled to deduct their costs, and payment of a further sum of Rs. 64-6-0 would have been sufficient compliance with the decree. They paid more than they were actually required to do, and we consider that the terms of the decree were fully satisfied. There is a case reported as *Bechai Singh* v. *Shami Nath* (1) which is exactly on all fours with the present case. There the suit was decreed on payment of Rs. 324-12-0 and the plaintiff was also awarded Rs. 9-11-0 as costs. The plaintiff paid Rs. 324 within the time fixed. This sum was annas 12 short of the amount named in the decree but it was held that the payment was sufficient, because the plaintiff was entitled to set off the balance of annas 12 against the costs payable to him. Here the sum paid in is Re. 1 less than the amount named in the decree but we hold that the plaintiff is entitled to set off the balance of Re. 1 against the costs payable to him.

We accept this appeal and setting aside the judgment of the learned Judge in Chambers, we dismiss the appeal to this Court and restore the decision of the Lower Appellate Court. The plaintiff will recover his costs in this Court both in the Letters Patent Appeal and in the appeal before the learned Judge in Chambers.

Appeal accepted.

(1) (1911) 10 Indian Cases 454.