

Khatun, Mr. Rafi had to admit that under Muhammadan Law they had no *locus standi* as Karim Bakhsh, through whom they claimed, died before his father Khuda Bakhsh.

We note that a preliminary objection was raised by respondents' counsel to the effect that in the absence of a certificate by the District Judge the appeals were not competent. The judgment of the lower Appellate Court, however, shows that that Court did not definitely decide whether the parties were governed by Muhammadan Law or by custom though it inclined to the view that they were governed by custom. No certificate was therefore necessary.

The appeals accordingly fail and are dismissed with costs.

A. N. C.

Appeals dismissed.

APPELLATE CIVIL.

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

BUDHU RAM AND ANOTHER (PLAINTIFFS)

Appellants,

versus

NIAMAT RAI AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No. 1669 of 1919.

Court fee—Suit for redemption—two decrees passed by Court—a preliminary decree fixing the amount payable and a final decree after payment of that amount—Appeal—for reduction of the redemption money—whether full Court-fee should be paid on both appeals.

Held, that in a suit for redemption where a preliminary decree was first passed fixing the amount payable and then a final decree after that amount had been paid, if appeals are preferred from both decrees asking for a reduction of the amount fixed in the preliminary decree and *ad valorem* Court-fee has been paid on the appeal from the preliminary decree on the amount of reduction claimed, a Court-fee stamp of Rs. 2 is sufficient on the appeal from the final decree.

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March 17.

First appeal from the decree of Khan Sahib Mirza Zafar Ali, Senior Subordinate Judge, Multan, dated the 24th June 1919, granting plaintiffs a decree.

TEK CHAND AND DALIP SINGH, for Appellants.
BADRI DAS, for Respondents.

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BUDHU RAM
v.
NIAMAT RAI.

The judgment of the Court was delivered by—

SCOTT-SMITH J.—Plaintiffs in the suit out of which the present appeal arises sued for redemption of a mortgage effected by Khushi Ram, their grandfather, on the 26th September 1890. The Court below passed a preliminary decree in which the amount payable by the plaintiffs was fixed at Rs. 39,340-11-7 on the 24th June 1919. The plaintiffs having paid the amount fixed into Court together with an additional sum of Rs. 409-8-0 interest accruing up to the date of payment, a final decree was passed on the 29th April 1920. The plaintiffs have filed appeals from both these decrees asking for reduction of the amount fixed in the preliminary decree by Rs. 32,225-11-7. On the appeal from the preliminary decree the plaintiffs paid court-fees *ad valorem* on the sum by which they wished the amount fixed therein to be reduced. On the appeal from the final decree they paid a court-fee of Rs. 2 only. A preliminary objection was raised, though not seriously pressed, by counsel for the respondents, to the effect that the appeal from the final decree had not been sufficiently stamped. He did not cite any authority in support of his objection which, in our opinion, has no force. The preliminary decree decided what the amount payable was and in the appeal from it the appellants contested the amount and paid full court-fees on the relief claimed by them. The final decree is a mere corollary to the preliminary decree, and followed it as a matter of course, the plaintiffs having paid into Court the amount fixed. There was nothing fresh for the Court to decide before it passed that decree and the appeal from that decree is really of a formal nature, and does not contest anything beyond what is contested in the appeal from the preliminary decree. Another way of looking at the matter is this. The decree in this redemption suit was passed in two parts. Similarly the appeal is made in two parts. Full court-fee has been paid on the amount claimed in the two appeals,

and we do not consider that the Legislature could ever have intended that in a case of this sort the appellant should have to pay the court-fees twice over. We notice that when the decree for redemption was originally passed by Rai Damodar Das and the defendants-respondents filed two appeals, they stamped their appeals in exactly the same way as the plaintiffs have now done. We overrule the preliminary objection.

[*The remainder of the judgment is not required for the purpose of this report.*—Ed.]

A. N. C.

Appeal accepted in part.

APPELLATE CIVIL.

Before Mr. Justice Abdul Raoof and Mr. Justice Lumsden.

BAHADUR CHAND (PLAINTIFF) Appellant,

versus

MUHAMMAD ISMAIL AND OTHERS (DEFENDANTS)
Respondents.

Civil Appeal No. 205 of 1920.

Specific performance—of a contract to sell—against a minor—necessity of proving that there was a complete contract and that it was for the minor's benefit.

On 17th January 1918, *Sheikh* Budha, as guardian of the 3 minor defendants, executed an agreement to sell the property in dispute to the plaintiff and received Rs. 100 as earnest money and on the same date applied to the Court for permission to effect the sale which was granted on 21st January. A draft deed of sale was prepared by the plaintiff but was not approved of by *Sheikh* Budha and on the 6th February the latter applied to the Court for sanction to sell the property to Ghulam Dastgir, defendant, as plaintiff had committed a breach of the conditions of the contract of sale. The sanction was given and the sale to Ghulam Dastgir was completed. The plaintiff then brought the present suit for specific performance of the contract of sale to him in terms of the draft deed of sale. It was found as a fact that *Sheikh* Budha had never agreed to the onerous terms of

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May 9.