

APPELLATE CIVIL

Before Sir Shadi Lal Chief Justice and Mr. Justice Forde.

1928

JAI GOPAL SINGH (PLAINTIFF)—Appellant,

versus

Feb. 2.

MUNA LAL AND OTHERS (DEFENDANTS)—Respondents.

Civil Appeal No. 58 of 1920.

Civil Procedure Code, Act V of 1908, order XLI, rule 22—whether cross-objections can be heard when the appeal was barred by limitation.

In this case the trial Court decreed the plaintiff's claim for pre-emption on payment of market value which it assessed at Rs. 20,344-10-0. The plaintiff appealed to the District Court on the ground that the market value was only Rs. 14,000 and the defendant-vendees filed cross-objections claiming that the amount should be Rs. 22,000. The District Judge held that the plaintiff's appeal was barred by limitation but accepted the cross-objections and increased the amount payable by the plaintiff to Rs. 22,000. The plaintiff appealed to the High Court.

cc. Held, that as the appeal to the District Court was barred by time neither the appeal nor the cross-objections were properly before the Court and accordingly the Court had no power to proceed with the matter and the decree of the Court of first instance must accordingly be restored.

Second appeal from the decree of Khan Bahadur Khwaja Tasaddug Hussain, District Judge, Hissar, dated the 25th August 1919, varying that of Pandit Devi Doyal Joshi, Subordinate Judge, 1st Class, Hissar, dated the 31st May 1918, and decreeing the claim.

BADRI DAS, for Appellant.

OERTEL AND HAZARA SINGH, for Respondents.

The judgment of the Court was delivered by—

FORDE J.—In this case the Court of first instance gave judgment for the plaintiff for possession of the land in dispute upon payment of a certain sum of money within a definite period. Against this judgment plaintiff appealed and defendant filed cross-objections.

It was held by the first Appellate Court, on the preliminary point raised by defendant, that the appeal was late, but, proceeding to dispose of the case on the merits, on the assumption that such finding was wrong, the learned District Judge dismissed the plaintiff's appeal and allowed the defendant's cross-objections.

The matter now comes before us on second appeal by plaintiff. Counsel for the appellant now submits that his appeal in the Court of the District Judge was barred by time and should have been dismissed on that ground.

Respondent's counsel admits that the appeal was late but urges that the cross-objections could nevertheless be heard and that the order of the District Judge is valid in so far as the cross-objections are concerned.

We cannot accept this view. It is clear that an appeal must be properly before the Court in order that cross-objections may be heard. As the appeal in question was admittedly barred by time, neither the appeal nor the cross-objections were properly before the Court, and accordingly the Court had no power to proceed with the matter. We must, therefore, accept the appeal and restore the decree of the Court of first instance. The plaintiff must deposit the price on or before the 31st March 1923. In the event of default his suit shall stand dismissed with costs.

C. H. O.

Appeal accepted

1923

JAI GOPAL SINGH

v.

MUNA LAL.