

## APPELLATE CIVIL.

Before Justice Abdul Raouf and Mr. Justice Pfordic.

SUKHRAM DAS (VENDEE, JUDGMENT-DEBTOR)

Appellant,

versus

NAZAR MUHAMMAD (PLAINTIFF,  
DECREE-HOLDER) AND OTHERS (DE- } Respondents.  
FENDANTS)

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Feb. 19.

Civil Appeal No. 1149 of 1921.

*Pre-emption—Decree for—in first Court—set aside in appeal, and restored by High Court in second appeal without extending period for payment of price—whether Execution Court can interpret the High Court decree as extending the time for payment.*

On 22nd March 1916 the trial Court passed a decree for pre-emption on payment of Rs. 1,200 by the 22nd May 1916. The District Judge on appeal dismissed the claim, but the High Court in second appeal restored the decree of the trial Court on 2nd February 1920. On 26th *idem* the decree-holder deposited the Rs. 1,200 and asked for possession. The judgment-debtor then objected that the money had not been paid within the time fixed by the trial Court.

*Held*, that the decree-holder was not entitled to possession of the property, the pre-emption price not having been deposited on the date fixed by the trial Court, and that the Execution Court could not interpret the decree of the High Court as extending the time for deposit as that would amount to a variation of the decree of the High Court.

*Miscellaneous second appeal from the order of W. deM. Malan, Esquire, District Judge, Jhelum, dated the 7th February 1921, affirming that of Khan Sahib Sardar Sultan Asad Jan, Senior Subordinate Judge, Gujrat, dated the 23rd March 1920, rejecting appellant's application.*

M. L. PURI, for Appellant.

SHAM LAL and SAIN DAS, for Respondents.

The judgment of the Court was delivered by—

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ABDUL RAQOOF J.—This is a second appeal arising out of execution proceedings relating to a decree for pre-emption. The facts may be summarised below :—

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The first Court passed a decree for pre-emption in favour of the plaintiff on the 22nd March 1916, granting possession on payment of Rs. 1,200 by the 22nd May 1916, that is, within 2 months from the date of the decree. The vendee appealed against this decree, and the appellate Court having accepted his appeal set aside the decree, which had been passed by the trial Court. The plaintiff then preferred a second appeal, with the result that the decree and judgment of the Appellate Court were set aside and those of the first Court were restored. The decree sheet prepared in the High Court recites the terms of the decree of the first Court. It may be mentioned that the successful pre-emptor did not deposit the pre-emption money within the time fixed or at any time before the decision of the High Court. The decree of the High Court was passed on the 2nd February 1920. The money was subsequently deposited on the 26th February 1920 and a prayer for the delivery of possession of the property was made. Thereupon the vendee judgment-debtor filed objections to the effect that inasmuch as the condition laid down in the decree of the first Court relating to the payment of the pre-emption money within the two months had not been carried out the decree-holder was not entitled to get possession in execution of his decree. This objection was disallowed by the first Court. On appeal to the lower appellate Court the judgment of the first Court has been upheld, and the vendee-judgment-debtor has come up on second appeal to this Court. The lower appellate Court has held that the High Court must

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have intended to extend the period of limitation, and that, therefore, the money which was paid within 24 days of the passing of the High Court decree was paid within time, and that the plaintiff decree-holder had fulfilled the conditions. Against this finding of the learned Judge of the Court below objection is taken on the ground that this amounts to variation of the terms of the decree of the High Court. In our opinion there is force in this contention. It is quite clear that the learned Judges of the High Court simply intended to restore the decree of the first Court. They made no variations in the terms of that decree, and if we were to accept the view of the lower appellate Court the result would be that the terms of the decree of the first Court would have to be varied by substituting quite a different date for payment of money from that provided in the decree. In our opinion it is not in the power of the executing Court to make any such variations. The result is that the appeal succeeds, the objections of the judgment-debtor are allowed and the application for execution is dismissed with costs.

A. N. C.

*Appeal accepted.*