

APPELLATE CIVIL.

Before Addison and Din Mohammad JJ.

FATEH CHAND AND OTHERS (DEFENDANTS)

Appellants *

versus

DR. MOTI SINGH AND ANOTHER
(PLAINTIFFS), SUNDAR SINGH } Respondents.
(DEFENDANT)

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Feb. 1.

Civil Appeal No. 143 of 1932.

Pre-emption—in respect of property in possession of mortgagees—Acquisition by pre-emptor of right of redemption — on depositing the purchase money in Court — Volunteer — redeeming a mortgage — whether entitled to right of subrogation.

Held, that by rule 14 (1) (b) of Order XX of the Civil Procedure Code, the Court decreeing a claim to pre-emption is bound to direct that on payment into Court of the purchase money, etc. the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from that date. If the property is in possession of mortgagees, the pre-emptor merely pre-empts the equity of redemption and if he deposits the money in Court within the period specified by the decree, he need not execute the decree for possession nor need he immediately sue the mortgagee for possession.

Raghubir Singh v. Jodha Singh (1), relied upon.

Held also, that a mere volunteer is not entitled to the benefit of any payment that he may make on behalf of a debtor, whether it be to redeem a mortgage or to pay off a simple money debt; the right of subrogation does not extend to those persons who pay off other people's debts without having any concern in them.

Velayndhan Pandaram v. Nallathambi Nadan (2), and *Nangunni v. Nedungadi* (3), relied upon.

(1) (1923) I. L. R. 45 All. 482. (2) 1928 A. I. R. (Mad.) 541

(3) 1929 A. I. R. (Mad.) 860.

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Second appeal from the decree of R. B. Lala Rangi Lal, District Judge, Hoshiarpur, dated 5th October, 1931, reversing that of Sheikh Karam Ilahi, Subordinate Judge, 2nd Class, Hoshiarpur, dated 1st June, 1931, and granting the plaintiffs a decree for possession, etc. etc.

MEHR CHAND MAHAJAN and MADAN LAL SETHI, for Appellants.

JAGAN NATH AGGARWAL and INDAR DEV, for ACHHRU RAM, for Respondents.

The judgment of the Court was delivered by—

DIN MOHAMMAD J.—The facts of the case giving rise to this second appeal are somewhat lengthy and complicated and may be set out in detail in order to make our decision clear in this matter. They are these :—

The land in suit was originally owned by Ganga Ram. On the 18th of August, 1890, he mortgaged it with possession to Sundar Singh and Gurmukh Singh for Rs.3,000. The mortgagees' shares *inter se* were specified in the deed as three-fourths and one-fourth, respectively. Some time later the names of Gurmukh Singh's brothers were also added as mortgagees in his share. In 1894 Ganga Ram died and was succeeded by his nephew Dhanintar. On the 11th of January, 1918, Dhanintar sold this land to Hira Lal for Rs.8,000. It was stipulated in the sale deed that the previous mortgagees will be paid off by the vendees out of the sale price and consequently a sum of Rs.5,234 was left with the vendee for this purpose. On the 10th of December, 1918, Dina Nath brought a suit for the pre-emption of this sale and on the 1st of June, 1919, he executed a deed of release in favour of Hira Lal, relinquishing whatever right he had for

Rs.99. On the 11th of January, 1919, Ram Bakhsh also brought a suit for pre-emption of the same sale. On the 20th of January, 1919, Dina Nath's suit was dismissed on a technical ground. On the 21st of January, 1919, Ram Bakhsh deposited 1/5th of the sale price and on the 21st of August, 1919, obtained a decree for pre-emption on payment of Rs.2,765-8-0 by the 31st of October, 1919. On the 28th of October, 1919, he deposited the balance due, but did not sue out execution of the decree. Some time later, Dina Nath's appeal against the order of dismissal was accepted by the District Judge and his suit was remanded for disposal in accordance with law. By the end of that year, Hira Lal died and was succeeded by his sons, the present plaintiffs. On the 2nd of February, 1920, Ram Bakhsh was impleaded as a co-defendant in Dina Nath's case along with the vendees. The case dragged on for some time and was eventually dismissed on the 20th of December, 1921, on the ground of the waiver set forth above. An appeal to the District Judge also failed, on which a second appeal was presented to this Court in 1923. On the 15th of May, 1923, Hira Lal's sons withdrew the money that had been deposited in Court by Ram Bakhsh for them. On the 20th of February, 1926, when Dina Nath's appeal was still pending in this Court he entered into a compromise with Ram Bakhsh behind the back of Hira Lal's sons by which Ram Bakhsh received the full amount paid by him into Court and agreed that his suit be dismissed and Dina Nath's appeal be accepted. An order was, accordingly, passed by this Court on the 22nd of December, 1926, accepting Dina Nath's appeal. On the 23rd of December, 1926, Dina Nath sold the land in suit in favour of Fateh Chand and others for Rs.3,000.

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Learning of the compromise in this Court, Hira Lal's sons applied for a review of the order of this Court, dated the 22nd of December, 1926, on the ground that no valid compromise could be effected in their absence and that Ram Bakhsh's title had already been extinguished by reason of his not having taken out execution of his decree. This application was granted by Zafar Ali J. on the 13th of May, 1927, and Dina Nath's appeal was consequently revived and fixed for hearing on the merits. On the 28th of May, 1927, Hira Lal's sons paid Rs.6,000 to Sundar Singh, mortgagee, and obtained redemption of $\frac{3}{4}$ ths of the property in suit. The mutation was duly entered on the 3rd of August, 1927, and sanctioned on the 17th of August, 1927. On the 19th of April, 1928, Dina Nath's appeal was dismissed by a Bench of this Court on the ground of waiver in favour of Hira Lal. On the 27th of June, 1928, summary proceedings for the redemption of the remaining $\frac{1}{4}$ th of the land were taken by Hira Lal's sons under the Redemption of Mortgages Act, but in vain. On the 3rd of July, 1928, Fateh Chand and seven others took possession of the whole of the land. On the 22nd of October, 1928, Hira Lal's sons brought a suit under section 9 of the Specific Relief Act, but it did not fructify. On the 5th of August, 1929, Fateh Chand and others secured a deed of release in their favour of whatever rights were possessed by Ram Bakhsh. On the 22nd of June, 1929, the present suit was instituted by Hira Lal's sons against Fateh Chand and others to which the representatives of both the mortgagees were also made parties. The prayer in this suit was that they may be allowed possession of $\frac{3}{4}$ ths of the land without any payment and of the remaining $\frac{1}{4}$ th of the land by redemption on payment of the mortgage

money due to Gurmukh Singh and others. It was also prayed in the alternative that if the reliefs mentioned above could not be granted to them they may be delivered joint possession of $3/4$ ths of the land as substitutes of Sundar Singh, mortgagee, whom they had paid off. This suit was resisted on various grounds and was dismissed by the Subordinate Judge on the 1st of June, 1931. On appeal, the District Judge decreed the suit, but ordered the plaintiffs to surrender the amount they had received from Court with interest up to July, 1928, when they were forcibly dispossessed by Fateh Chand and others. It is against this decision that all the defendants including Fateh Chand and others have appealed.

Counsel for the appellants strenuously contends that the decision of the District Judge is wrong. He argues that as soon as Ram Bakhsh deposited the decretal amount on the 28th of October, 1919, the plaintiffs were divested of any title they had to the land in suit and Ram Bakhsh was simultaneously invested with it; that the land being in possession of the mortgagees, Ram Bakhsh need not have sued out execution of his decree; that the subsequent surrender of his title by Ram Bakhsh in favour of Dina Nath in 1926 could not, in any way, resuscitate the plaintiffs' title that had become defunct long ago; that Ram Bakhsh's prayer in the deed of compromise that his suit be dismissed could not confer on this Court the power of dismissing it, as no such suit was before this Court at that time; that the subsequent dismissal of Dina Nath's suit brought to life Ram Bakhsh's right to the land in suit which had already been perfected as against the plaintiffs by deposit of the decretal amount in full and that the plaintiffs, therefore, had no right to claim possession of the land as against Ram

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Bakhsb or his assignees. He further urges that plaintiffs, having no right or title whatsoever to the land in May, 1927, when they paid off Sundar Singh, mortgagee, could not successfully claim to be subrogated for him, as the law of subrogation protects only those who possess some right or semblance of right and not mere intermeddlers, who, like the plaintiffs, have not even the remotest connection with the property they redeem. To this, counsel for the respondents replies that Ram Bakhsb lost all his claim, first, by not taking out the execution of his decree and, secondly, by entering into an agreement with Dina Nath that his suit be dismissed and by further accepting payment from him of his deposit in full, and that Dina Nath's suit having been dismissed against the plaintiffs they were at once restored to the status they enjoyed prior to the institution of the pre-emption suits.

We have heard lengthy arguments on all the points set out above and have come to the conclusion that this appeal must succeed, and the decree of the Subordinate Judge be restored in its entirety. By rule 14 (1) (b) of Order 20 of the Civil Procedure Code the Court decreeing a claim to pre-emption is bound to direct that on payment into Court of the purchase money, etc. the defendant shall deliver possession of the property to the plaintiff whose title thereto shall be deemed to have accrued from that date. If the property is in possession of the mortgagees, the pre-emptor merely pre-empts the equity of redemption and if he deposits the money in Court within the period specified by the decree, he need not execute the decree for possession nor need he immediately sue the mortgagee for possession. Reference, in this connection

may be made to *Raghubir Singh v. Jodha Singh* (1). It follows, therefore, that the right of Ram Bakhsh accrued under the statute from the date he made the deposit and it was not extinguished by merely not proceeding with the execution of the decree, as the entire land decreed in his favour was in possession of the mortgagees. As two conflicting titles could not exist at one and the same time, the plaintiffs *ipso facto* ceased to hold any right or title to this land at the very moment the deposit was made by Ram Bakhsh and thus became absolute strangers to the land in suit. The only thing that happened afterwards was the surrender by Ram Bakhsh of his claim in favour of Dina Nath and the dismissal of Dina Nath's suit on the ground of waiver. Counsel for the respondents has failed to urge any reason for maintaining that this could in any manner operate to revive the title of the plaintiffs that had once been completely lost. At the time when Dina Nath was prosecuting his suit or appeal the controversy in fact lay between him and the rival pre-emptor who had successfully ousted the original vendee. The vendee had ceased to exist and Ram Bakhsh had been substituted in his place. The decree obtained by Ram Bakhsh could be set at naught only if Dina Nath could establish a title superior to him. The recital in the deed of compromise that his suit be dismissed could not amount to an extinguishment of the decree. It was a mere surrender in favour of Dina Nath. Otherwise, as against the original vendee, the decree was alive and as soon as Dina Nath's suit was crushed and his pressure removed, even though it happened by the efforts of the vendee, Ram Bakhsh's right sprang forth in full vigour and held the field. Hira Lal's representatives,

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therefore, could not in law be benefited by either Ram Bakhsh's compromise or Dina Nath's failure. For the same reason they had no business whatsoever to pay off the previous mortgagees. In *Velayndhan Pandaram v. Nallathambi Nadan* (1), it was held that a mere volunteer was not entitled to the benefit of any payment that he might make on behalf of a debtor, whether it be to redeem a mortgage or to pay off a simple money debt. In *Nangunni v. Nedungadi* (2), a Bench of the Madras High Court laid down on the authority of some English and American cases on the subject that the right of subrogation does not extend to those persons who pay off other people's debts without having any concern in them. The same conditions exist here and the same principles of law will apply.

We, therefore, accept this appeal and dismiss the plaintiffs' suit with costs throughout.

A. N. C.

Appeal accepted.

(1) 1928 A. I. R. (Mad.) 541. (2) 1929 A. I. R. (Mad.) 860.