SUPREME COURT OF INDIA

Naguba Appa

v.

Namdev

(Mahajan J. and others)

November 20, 1950

Judgment

Mahajan J.

1. A decree for pre-emption of the property in suit was passed in favour of the plaintiff and he was ordered to deposit the sale price within two months from the date of the decree. An appeal was taken against this decision but it was withdrawn. The pre-emption money was not deposited within the time fixed in the decree. The preemptor made an application to the court for making the deposit without disclosing that the time fixed by the decree had elapsed. The application was allowed. The defendant, when apprised of the situation, made an application to the court to the effect that the plaintiff's suit stood dismissed owing to his failure in making the deposit in time and that he was not entitled to execute the decree. The trial Judge held that the pre-emption money not having been paid within the time fixed in the decree the suit stood dismissed. On appeal this decision was set aside but on second appeal it was restored and it was held that the suit stood dismissed under Order 20, Rule 14, Civil Procedure Code. Against this decision an appeal was preferred to the Judicial Committee of the State and it is now before us under Article 374(4) of the Constitution.

2. It was contended on behalf of the appellant that the decision of the High Court was wrong inasmuch as an appeal having been preferred from the trial court's decree in the pre-emption suit, the preemptor was justified in not depositing the amount within the time fixed by the decree. This argument cannot be sustained. Mere filing of an appeal does not suspend the decree of the trial Judge and unless that decree is altered in any manner by the court of appeal, the preemptor is bound to comply with its directions. In our opinion, the High Court was right in holding that the preemptor's suit stood dismissed by reason of his default in not depositing the pre-emption price within the time fixed in the trial Court's decree. It was next contended that the decree drawn up by the trial Judge was not in accordance with the provisions of Order 20 Rule 14 in that it contained no direction to the effect that if the deposit was not made within the time fixed the suit will stand dismissed. In our view, this contention is not sound because the dismissal of the suit is as a result of the mandatory provisions of Order 20 Rule 14 and not by reason of any decision of the Court and the omission to incorporate this direction in the decree could not in any way affect the rights of the parties.

3. The result therefore is that this appeal fails and is dismissed with costs.

Case Number(s)
Not stated in the source

Statute(s) referred

Statute	Section/Article	Para
Code of Civil Procedure, 1908	Order XX, Rule 14	1, 2
Constitution of India	Article 374(4)	1

Advocate(s)
Not stated in the source text.

(P) – Provisional