

SULLEH SINGH & ORS.

v.

SOHAN LAL & ANR.

September 2, 1975

[A. N. RAY, C.J., K. K. MATHEW AND Y. V. CHANDRACHUD, JJ.]

Code of Civil Procedure, Act V of 1908, Order 20, Rule 14—Pre-emption—Pre-emptor's suit, if stood dismissed on his failure to deposit pre-emption price within the time fixed by Trial Court.

The vendors sold the suit land to the appellants (vendees) by a registered deed of sale for Rs. 43,000/-. The respondents filed the suit for possession by pre-emption of the land in payment of Rs. 30,000/- on the allegations that the respondents were on the date of sale tenants of the land under the vendors. They also alleged that the sale took place for Rs. 30,000/- only and the remaining amount was fictitiously mentioned in the deed of sale. The suit was dismissed on the ground that one suit on behalf of the four plaintiffs, who were tenants of different parts of the land, was not maintainable. On appeal the suit was remanded for re-trial. At the trial on remand, two plaintiffs withdrew from the suit. The trial court directed the remaining two plaintiffs-respondents Sohan Lal and Nathi to deposit Rs. 6,300/- and Rs. 5,670/- respectively on or before 1 April, 1969 less 1/5th of the pre-emption amount already deposited by them. The Trial Court gave the respondent Sohan Lal a decree for possession by pre-emption in respect of Killa Nos. 14/1 17 and 18/1 of Rectangle 37. The plaintiffs-respondents, aggrieved by the order, filed an appeal alleging that the decree should have been passed for the whole of the land because the respondent Sohan Lal was also a tenant of Killa No. 24 of Rectangle 37 under the vendors. On 29 July, 1969, the Additional District Judge passed a decree for possession by pre-emption in favour of respondent Sohan Lal of Killa No. 24 of Rectangle 37 on payment of Rs. 9,100/- and he was also directed to deposit this amount on or before 20 August, 1969. The decree in favour of Nathi was maintained without charge. The appellants filed an appeal before the High Court and it was contended before the High Court that respondents did not deposit the decretal amount by 1 April, 1969 as directed by the Trial Court and, therefore, the suit was liable to be dismissed under Order 20 Rule 14 of the Code of Civil Procedure. The High Court accepted the appeal of the appellants against the plaintiff Nathi and dismissed the appeal against the plaintiff-respondent Sohan Lal. The High Court said that since the lower appellate court granted Sohan Lal decree for one more Killa and directed that the amount would be Rs. 9,100/-, the respondent was to comply with the appellate decree and not the decree of the Trial Court.

Allowing the appeal by special leave.

HELD: (1) The directions given by the Trial Court are mandatory under the provisions contained in Order 20 Rule 14 of the Code of Civil Procedure. A decree in terms of Order 20 Rule 14, imposes obligations on both sides and they are so conditioned that performance by one is conditional on performance by the other. [600E-F, G]

Naguba Appa v. Namdey reported in A.I.R. 1954 S.C. 50 and *Dattarava s/o Keshav Tawalay v. Shaikh Mahboob Shaikh Ali and Anr.* [1969] 2 S.C.R. 514 relied on.

(ii) It is only if the plaintiffs-respondents had obtained another order from the lower appellate Court granting any order of stay that the lower appellate court might have considered the passing of appropriate order in favour of pre-emptors. The High Court should have allowed the appellants' appeal and not made any distinction in dismissing plaintiff-respondent Nathi's suit and allowing plaintiff-respondent Sohan Lal any extension of time to make the payment. [601F-G]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 496 of 1974.

Appeal by Special Leave from the Judgment and Order dated the 2nd May, 1973 of the Punjab and Haryana High Court in R.S.A. No. 1469 of 1969.

B *O. P. Sharma* for the appellant.

R. N. Dikshit for Respondent No. 1.

The Judgment of the Court was delivered by

RAY, C.J.—This appeal is by special leave from the judgment dated 2 May, 1973 of the Punjab and Haryana High Court.

C The appellants are vendees of the land in suit. The vendors sold the land to the appellants for Rs. 43,000/- on 26 August, 1965. The transaction was by registered deed of sale.

D The respondents filed this suit for possession by pre-emption of the land in payment of Rs. 30,000/- on allegations that the respondents were on the date of sale tenants of the land under the vendors. The respondents alleged that their right of pre-emption was superior to that of the vendees. They also alleged that the sale took place for Rs. 30,000/- only and the remaining amount was fictitiously mentioned in the deed of sale. The suit was dismissed on the ground that one suit on behalf of the four plaintiffs, who were tenants of different parts of the land, was not maintainable.

On appeal the suit was remanded for re-trial.

E At the trial on remand, two plaintiffs withdrew from the suit. The trial court directed the remaining two plaintiffs-respondents Sohan Lal and Nathi to deposit Rs. 6,300/- and Rs. 5,670/- respectively on or before 1 April, 1969 less 1/5th of the pre-emption amount already deposited by them. The Trial Court gave the respondent Sohan Lal a decree for possession by pre-emption in respect of Killa Nos. 14/1, 17 and 18/1 of Rectangle 37. The plaintiffs-respondents aggrieved by the order filed an appeal alleging that the respondent Sohan Lal was a tenant of Killa No. 24 under the vendors and the decree should have been passed in their favour for the whole of the land and that decree should have been passed in favour of Sohan Lal in respect of Killa No. 24 of Rectangle 37. The other ground in the appeal was that the decree should have been passed in favour of the plaintiffs-respondents for whole of the land.

G The Additional District Judge on 29 July, 1969 passed a decree for possession by pre-emption in favour of respondent Sohan Lal on payment of Rs. 9,100/- and he was directed to deposit this amount in Court on or before 20 August, 1969. The Additional District Judge passed a decree for possession by pre-emption in favour of respondent Sohan Lal of Killa No. 24 of Rectangle 37. The decree in favour of respondent Nathi was maintained without change.

H Thereafter, the appellants preferred an appeal in the High Court alleging that the decision that plaintiff-respondent Sohan Lal was also a

tenant of Killa No. 24 was incorrect and should be set aside and the decree of the Trial Court should be restored. The appellants also prayed that the decree in favour of the two plaintiffs-respondents Sohan Lal and Nathi were liable to be set aside.

The appellants contended before the High Court that respondents Sohan Lal and Nathi did not deposit the decretal amount by 1 April, 1969 as directed by the Trial Court and, therefore, the suit was liable to be dismissed under the provisions contained in Order 20 Rule 14 of the Code of Civil Procedure.

The other contention of the appellants before the High Court was that the plaintiff-respondent Sohan Lal should not have been granted pre-emption rights in respect of Killa No. 24.

The High Court on 2 May, 1973 accepted the appeal of the appellants against the plaintiff Nathi and dismissed the appeal against the plaintiff-respondent Sohan Lal. The High Court said that since the lower appellate court granted Sohan Lal decree for one more Killa and directed that the amount would be Rs. 9,100/-, the respondent was to comply with the appellate decree and not the decree of the Trial Court.

The appellants contended that neither Sohan Lal nor Nathi deposited the amount in accordance with the decree of the Trial Court on or before 1 April, 1969 and the suit should have been dismissed on that ground alone and the appeal should have been allowed. The appellants contended that the lower appellate court had no power and jurisdiction to give further time to Sohan Lal to deposit the pre-emption amount by an extended date.

This Court in *Naguba Appa v. Namdev*⁽¹⁾ held that the directions given by the Trial Court are mandatory under the provisions contained in Order 20 Rule 14 of the Code of Civil Procedure. This Court in *Naguba Appa's* case (supra) said that "mere filing of an appeal does not suspend the decree of the Trial Court and unless that decree is altered in any manner by the Court of Appeal, the pre-emptor is bound to comply with that direction".

In *Dattaraya s/o Keshav Tawalay v. Shaikh Mahboob Shaikh Ali & Anr.*⁽²⁾ this Court said that a decree in terms of Order 20 Rule 14, imposes obligations on both sides and they are so conditioned that performance by one is conditional on performance by the other. To illustrate, if the defendants by obtaining the stay order from the High Court relieve themselves of the obligation to deliver possession of the properties the plaintiff-decree-holder must also be deemed thereby to be relieved of the necessity of depositing the money so long as the stay order continues.

In the present case, the lower appellate court did not grant any stay to the plaintiffs-respondents. In view of the fact that the plaintiffs-respondents did not deposit the amount as directed by the Trial Court

(1) A.I.R. 1954 S.C. 50.

(2) [1969] 2 S.C.R. 514.

A on or before 1 April, 1969, it became mandatory on the lower appellate court by reason of the ruling of this Court in *Naguba Appa's* case (supra) to dismiss the suit. The observations of this Court in *Naguba Appa's* case (supra) that the pre-emptor is bound to comply with the directions of the Trial Judge unless that decree is altered in any manner by a Court of Appeal do not mean that where the deposit is not made in accordance with the directions of the Trial Court, the appellate court can extend the time for payment. Thereafter, the lower appellate court was in error in extending the time for payment till 20 August, 1969.

B In *Naguba Appa's* case the pre-emption money was not deposited within the time fixed in the decree. The pre-emptor 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 on account of his failure in making the deposit in time. 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 the decision was set aside. On second appeal it was restored and it was held that the suit stood dismissed under Order 20, Rule 14 Civil Procedure Code. An appeal was preferred against the judgment of the High Court. This Court held that the High Court was right in holding that the pre-emptor'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.

E The contention of the appellants that the lower appellate court was wrong in extending the time for payment is correct because the failure of the plaintiffs-respondents to deposit the amount in terms of the Trial Court's decree would result in pre-emptors' suit standing dismissed by reason of their default in not depositing the pre-emption price. The contention of the appellants that the High Court was wrong in not setting aside the order of extension of time passed by the lower appellate court is correct. It is only if the plaintiffs-respondents had paid the decretal amount within the time granted by the Trial Court or if the plaintiffs-respondents had obtained another order from the lower appellate Court granting any order of stay that the lower appellate court might have considered the passing of appropriate order in favour of pre-emptors. The High Court should have allowed the appellants' appeal and not made any distinction in dismissing plaintiff-respondent Nathi's suit and allowing plaintiff-respondent Sohan Lal any extension of time to make the payment. Further, it appears that the plaintiff-respondent Sohan Lal did not pay the amount.

For these reasons the appeal is accepted. Suit of the plaintiffs-respondents is dismissed. The appellants are entitled to costs.

H V.M.K.

Appeal allowed.