

article 62 which appears to be the article which would be applicable to the case.

We therefore reverse the decree of the lower Appellate Court and restore that of the Subordinate Judge with costs throughout.

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RUSTOMJI
ARDESHIR
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VINAYAK
GANGADHAR
BHAT.

Decree reversed.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

WANA MARD RAVJI (ORIGINAL PLAINTIFF), APPELLANT, v. NATU WALAD MURHA AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

1910.

August 1.

Civil Procedure Code (Act V of 1908), O. XXI, r. 1—Decree—Payment of money ordered in a decree—Payment ordered on a fixed date—Delay in making payment into Court owing to closing of Court—Payment on the opening day—General Clauses Act (X of 1897), section 10—Practice.

A decree provided as follows: "The plaintiff should pay, by the 10th day of April 1909, to the defendant Rs. 100. If the moneys are not paid by the plaintiff as agreed upon, the property in dispute will remain with the defendants by right of ownership and the plaintiff will have no right of ownership over the same." The plaintiff chose to pay the money into Court, and finding it closed on the 10th, she paid the money on the 14th April 1909, the day on which the Court re-opened. A question having arisen whether the payment so made was within the terms of the decree,

Held, that the payment was properly made, for O. XXI, r. 1 of the Civil Procedure Code, 1908, intended to enact and did enact that payment into Court was a valid compliance with the decree even though the decree directed payment to the decree-holder.

SECOND appeal from the decision of H. S. Phadnis, District Judge of Khandesh, confirming the order passed by K. G. Tilak, Subordinate Judge of Yaval.

Proceedings in execution.

* Second Appeal No. 88 of 1910.

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The decree under execution was passed on the 9th January 1909; it provided as follows:—

“The property in dispute belongs to the plaintiff by right of ownership. In the present matter, the plaintiff should, by the 10th day of April in the year 1909, pay to the defendants in all Rs. 100, namely, one hundred for costs, &c. If the moneys are not paid by the plaintiff, as agreed upon, the property in dispute will remain with the defendants by right of ownership, and the plaintiff will have no right of ownership over the same. If on the plaintiff paying the moneys as agreed the defendants do not deliver over to her the possession, the plaintiff should recover possession of the property in dispute through a Court.”

The payment directed by the decree was not made by the plaintiff to the defendants personally. She chose to pay it into Court; and as the Court was closed on the 10th April 1909, she paid it on the 14th April, the day on which the Court re-opened.

The defendants contended that as the plaintiff had failed to make the payment on or before the 10th April 1909, the property had become his under the terms of the decree.

Both lower Courts upheld the defendants' contention.

The plaintiff appealed to the High Court.

P. P. Khare, for the appellant:—

The decree in question did not indicate any particular mode of payment, and O. XXI, r. 1 of the Civil Procedure Code, 1908, leaves it to the option of the party either to pay the money into Court or to the other party. The delay in payment here was not owing to any default on plaintiff's part, and the payment made on the opening day of the Court enures to him. See *Arayamudu Ayyangar v. Samiyappa Nadan*⁽¹⁾.

M. V. Bhat, for the respondents:—

The decree directed in specific terms that Rs. 100 were to be paid on a fixed date. There having been a default in payment, the terms of the decree must be enforced on that footing.

HEATON, J.:—The decree with which we are here concerned stated as follows:—“The property in dispute belongs to the

(1) (1898) 21 Mad. 385.

plaintiff by right of ownership. In the present matter the plaintiff should, by the 10th day of April in the year 1909, pay to the defendants in all Rs. 100, namely, one hundred for costs, &c. If the moneys are not paid by the plaintiff as agreed upon, the property in dispute will remain with the defendants by right of ownership and the plaintiff will have no right of ownership over the same."

The payment required was not made, on or before the 10th April, but was made into Court on the 14th April. On these facts both the lower Courts have held that the payment was not in time and was not of avail to satisfy the requirements of the decree. The plaintiff, who has appealed, urges that she had the option of paying to the defendant or of paying into Court: that she chose the latter method, and as the Court was closed from 10th to 13th April and she paid into Court on the 14th, it is a good payment and a valid performance of what the decree requires.

The reasoning of the Appellate Court was that the money had by the terms of the decree to be paid to the defendant: that the plaintiff had no option to pay into Court. In this the District Judge, in my opinion, was wrong. Rule 1 of Order XXI of the Code of Civil Procedure provides that "all money payable under a decree shall be paid into Court," or "out of Court to the decree-holder." It intends to enact and does enact that payment into Court is a valid compliance with a decree, even though the decree directs payment to the decree-holder. The ordinary form of money-decree directs payment to the decree-holder. (See Forms 1 and 2 of Appendix D in the first Schedule to the Code.) Payment into Court under such a decree is regarded, and in my opinion rightly regarded, as a compliance with the decree. I say nothing as to what the law would be if the decree required that payment should be to the decree-holder and not otherwise. The decree is not in that form. Therefore I think that had it been possible to pay into Court on the 10th April, such a payment would have discharged the obligation imposed on the plaintiff by the decree. It was not possible, for the Court was closed on that day. Therefore, I think, section 10 of the General Clauses Act (Act X of 1897) comes into play and that the payment on the 14th April

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"the next day afterwards on which the Court was open" was just as good a payment as would have been a payment on 10th April had the Court been open on that day.

Therefore I think the orders of the Courts below were wrong, that they must be reversed and the original Court directed to dispose of the application according to law. Costs to be costs in the Darkhast.

CHANDAVARKAR, J.:—I concur.

Order reversed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

1910.
 August 4.

IRAWA KOM LAXMANA MUGALI AND OTHERS (ORIGINAL DEFENDANTS),
 APPELLANTS, v. SATYAPPA BIN SHIDAPPA MUGALI AND ANOTHER
 (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), section 11—Res judicata—Decision of first suit on merits but its dismissal for not paying the deficient Court-fees—Second suit for trial on same merits.

A previous suit between the parties failed on the ground that the claim was undervalued and the plaintiff when called upon to pay the deficient Court-fees omitted to do so. There were issues on merits also decided. In a subsequent suit for trial on the same merits, the decision in the first suit was pleaded as *res judicata*.

Held, that the rejection of the suit on the ground of undervaluation at any stage of it did not make it *res judicata* for the purposes of a subsequent suit on the same cause of action or litigating the same title.

Held, further, that the dismissal of the suit on the ground of undervaluation having been sufficient by itself, the findings on the issues on the merits were not necessary for the decision of the suit and could not have the force of *res judicata*.

APPEAL from order passed by V. V. Phadke, First Class Subordinate Judge of Belgaum, reversing the decree passed by, and remanding the suit to, C. G. Kharkar, Subordinate Judge at Gokak.

* Appeal No. 13 of 1910 from order.