

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Hayward.

SATWAJI BALAJIRAV DESHAMUKH (ORIGINAL PLAINTIFF), APPELLANT,
 v. SAKHARLAL ATMARAMSHET (ORIGINAL DEFENDANT 7),
 RESPONDENT.*

1914.
 September 8

Decree for possession on payment of a certain sum within six months, in default, forfeiture of the right to recover possession—Appeal—Confirmation of decree—The term of six months to run from the date of the final decree.

The plaintiff brought a suit to recover possession of property as purchaser from defendants 1—6 and to redeem the mortgage of defendant 7. The first Court having dismissed the suit, the appellate Court, on plaintiff's appeal, passed a decree directing the plaintiff to recover possession on payment to defendants 1—6 of a certain sum within six months from the date of its decree and then to redeem defendant 7, and on plaintiff's failure to pay within six months from the date of the decree he should forfeit his right to recover possession. All parties being dissatisfied with the decree, the plaintiff preferred a second appeal to the High Court and the two sets of defendants filed separate sets of cross objections. The High Court confirmed the decree and the plaintiff's second appeal and the defendants' cross objections were dismissed.

Within six months of the date of the High Court's decree the plaintiff deposited in Court the amount payable by him and applied for execution. Defendant 7 contended that the plaintiff not having complied with the terms of the decree of the first appellate Court, his right to recover possession in execution was forfeited. The lower Courts upheld the defendant's contention and dismissed the darkhast.

On second appeal by the plaintiff,

Held, reversing the decree, that the time for executing a decree *nisi* for possession ran from the date of the High Court's decree confirming the decree of the lower Court, for what was to be looked at and interpreted was the decree of the final appellate Court.

Raja Bhup Indar Bahadur Singh v. Bijai Bahadur Singh⁽¹⁾ and *Nanchand v. Vithu*⁽²⁾, followed.

SECOND appeal against the decision of G. R. Datar, Additional Assistant Judge of Thana, confirming the

* Second Appeal No. 169 of 1914.

⁽¹⁾ (1900) L. R. 27 I. A. 209.

⁽²⁾ (1894) 19 Bom. 258.

1914.

SATWAJI
BALAJIRAV
v.
SAKHARLAL
ATMARAM-
SHET.

order of K. V. Mehta, Subordinate Judge of Murbad, in an execution proceeding.

The plaintiff brought a suit against defendants 1—6 to recover possession of the property as purchaser and for redemption against defendant 7 to whom his vendors had already mortgaged the property. The defendants contested the plaintiff's title. The Subordinate Judge found that the plaintiff's title was not proved and the suit was dismissed.

On appeal by the plaintiff the District Judge found that the plaintiff's sale-deed gave him a title to the lands in suit. He, therefore, set aside the decree of the Subordinate Judge and passed his own in the following terms on the 23rd December 1910 :—

I set aside the lower Court's order dismissing the suit and direct that on plaintiff-appellant paying defendants 1—6 the sum of Rs. 203-1-8 and paying all costs his own and defendants 1—7 in the suit, within six months from today, he shall be put in possession of the property and shall then pay defendant 7 the sum of Rs. 997-8-0 now found to be due on the mortgages with future interest at 6 per cent. per annum from the date of recovering possession to the date of payment on Rs. 633 (.....) by annual instalments of Rs. 150 payable in February of each year beginning with February 1912. If there is a failure to pay any instalment when due defendant 7 may apply to the Court for an order under section 15B (2), Dekkhan Agriculturists' Relief Act. If plaintiff fails to pay the sum due to defendants 1—6 and costs within six months from today he shall forfeit his right to recover possession of the land.

Against the said decree the plaintiff preferred a second appeal, No. 284 of 1911, and defendants 1—6 and defendant 7 filed separate sets of cross objections. In the said second appeal and cross objections the High Court merely confirmed the decree of the District Court on the 26th February 1912.

Subsequently the plaintiff paid the money into Court and filed a darkhast, No. 212 of 1912, for the execution of the decree. Defendant 7 contended that the plaintiff

had forfeited his right to recover possession as he failed to comply with the decree of the District Court directing payment within six months from the date of that decree. The Subordinate Judge dismissed the darkhast observing :—

The plaintiff should have deposited the amount within the time fixed in the decree of the District Court or applied to the High Court to extend the time fixed in the District Court's decree. The decree of the High Court confirming the decree of the District Court cannot be interpreted to extend the time fixed in the decree of the District Court, *Ramaswami v. Sundara*, I. L. R. 31 Mad. 28.

On appeal by the plaintiff the appellate Judge confirmed the order.

The plaintiff preferred a second appeal.

P. D. Bhide for the appellant (plaintiff) :—We submit that the period of six months for the payment of the amount should be counted from the date of the High Court's decree in the second appeal wherein the decree of the District Court of Thana was confirmed. The decree of the Thana District Court in appeal became merged in the High Court's decree in the second appeal and the High Court's decree was the only decree in the case that could be executed. We paid the amount into Court within six months of the High Court's decree. The lower Court was, therefore, wrong in refusing to put us in possession. On this point the rulings of this Court are all one way and lay down that it is the decree of the High Court, that is, the last decree in the case which should be considered in such cases.

Further, the decree of the Thana District Court was in the nature of a decree *nisi* and so was not capable of execution till it was made absolute.

T. R. Desai for the respondent (defendant 7) :—The decree of the Thana District Court in appeal was not a decree *nisi*. It imposed a condition on the plaintiff,

1914.

SATWAJI
BALAJIRAV
v.
SAKHARLAL
ATMARAM-
SHET.

1917

SATWAJI
BALAJIRAV
v.
SAKHARLAL
ATMARAM-
SHET.

first to pay the balance of the purchase-money to defendants 1—6 within six months and then, having done so, he was to redeem defendant 7. The Bombay cases do not touch the point. The decree of the High Court confirming the decree of the Thana District Court could not *per se* extend the period of six months given in the latter decree. We rely upon the decision of the Madras High Court in *Ramaswami Kone v. Sundara Kone*⁽¹⁾. There the lower Court had fixed a period of one month for payment. The period expired and there was an appeal and the decree was subsequently confirmed. But the right to pay was held lost because the period of one month from the date of the original decree had expired. To hold otherwise would be to enable a dishonest party to secure extension of time by merely managing to file an appeal. The same principle is applied in pre-emption decrees by the Allahabad High Court in *Jaggar Nath Pande v. Jokhu Tewari*⁽²⁾ and *Chiranji Lal v. Dharam Singh*⁽³⁾. The Calcutta High Court has taken the same view in *Bhola Nath Bhattacharjee v. Kanti Chundra Bhattacharjee*⁽⁴⁾. If at all, the only remedy of the plaintiff would have been to apply, if so advised, to the High Court for review in the second appeal and ask for extension of time. But he cannot ask the executing Court to extend the time at this stage. Section 148 of the Civil Procedure Code of 1908 is not applicable: *Suranjan Singh v. Ram Bahal Lal*⁽⁵⁾.

SCOTT, C. J. :—The suit in relation to which the execution proceedings now in question have been taken was brought by the plaintiff against the first six defendants as vendors who denied his title as purchaser and against the seventh defendant as mortgagee from the

(1) (1907) 31 Mad. 28.

(3) (1896) 18 All. 455.

(2) (1895) 18 All. 223.

(4) (1897) 25 Cal. 311.

(5) (1912) 10 A. L. J. 520.

other defendants to enforce his purchase against the vendors and to redeem the mortgage.

The original Court dismissed the suit holding that the plaintiff's title as purchaser was not established as he had not paid the full purchase-money and was not ready and willing to perform his contract. The first appeal Court, however, reversed the decree of the original Court and passed a decree that on plaintiff paying defendants 1 to 6 the sum of Rs. 203-1-8 and paying all costs in the suit within six months from the date of the decree he should be put in possession of the property and should then pay defendant 7 the sum of Rs. 997-8-0 found due on the mortgage with further interest from the date of recovering possession to date of payment on Rs. 633 by annual instalments of Rs. 150 payable in February of each year beginning with February 1912 and that if the plaintiff failed to pay the sum due to the defendants 1 to 6 and costs within six months from the date of the decree he should forfeit his right to recover possession of the land.

None of the parties were satisfied by this decree. The plaintiff within ninety days filed an appeal to the High Court and the two sets of defendants filed separate sets of cross-objections. The decree was, however, confirmed by the High Court and the appeal and cross-objections were dismissed.

Within six months from the date of the High Court decree the plaintiff deposited in Court the amount payable by him. The defendant 7 then put in an objection that the plaintiff not having complied with the terms of the decree of the first appellate Court his right to recover possession in execution was forfeited.

Both the lower Courts have upheld this objection on the authority of *Ramaswami Kone v. Sundara Kone*⁽¹⁾.

⁽¹⁾ (1907) 31 Mad. 28.

1914.

SATWAJI
BALAJIRAV
v.
SAKHARLAL
ATMARAM-
SHET.

1914.

SATWAJI
BALAJIRAV
v.
SAKHARLAL
ATMARAM-
SHET.

There is, however, the direct authority of this Court to the contrary : see *Nanchand v. Vithu*⁽¹⁾. It was there said : "Both parties must be held equally bound or equally benefited by the result of this second appeal, and if the original respondents would have become entitled to execute the decree of the High Court in case it had reversed the decision of the lower Courts, we do not see any reason which prevents the present appellant from claiming his right to execute the decree of the High Court in his favour." These observations, which were based upon a similar state of facts, are applicable to the present case and the lower Courts should have followed that decision. It was in accordance with a decision reported in *Sakhalchand Rikhawdas v. Velchand Gujar*⁽²⁾.

The decision of the Madras High Court followed by the lower Courts refers to the judgment of Sir John Edge in *Jaggat Nath Pande v. Jokhu Tewari*⁽³⁾, which was based upon the express provisions of section 214 of the Civil Procedure Code applicable in decrees in pre-emption suits, but we do not understand that judgment as throwing any doubt on the Full Bench decision in *Muhammad Sulaiman Khan v. Muhammad Yar Khan*⁽⁴⁾, delivered by the same learned Chief Justice and applied in *Sakhalchand Rikhawdas v. Velchand Gujar*⁽²⁾ and *Nanchand v. Vithu*⁽¹⁾ or the Full Bench decision of the Allahabad High Court, *Shohrat Singh v. Bridgman*⁽⁵⁾, explained and adopted in *Muhammad Sulaiman Khan v. Muhammad Yar Khan*⁽⁴⁾. The observations of Banerjee J. in *Bhola Nath Bhattacharjee v. Kanti Chundra Bhattacharjee*⁽⁶⁾, referred to in *Ramaswami Kone v. Sundara Kone*⁽⁷⁾ and relied on

⁽¹⁾ (1894) 19 Bom. 258.⁽⁴⁾ (1888) 11 All. 267.⁽²⁾ (1893) 18 Bom. 203.⁽⁵⁾ (1882) 4 All. 376.⁽³⁾ (1896) 18 All. 223.⁽⁶⁾ (1897) 25 Cal. 311.⁽⁷⁾ (1907) 31 Mad. 28.

by the respondent's pleader before us, were in a case where the decree of the lower Court had been dismissed and not confirmed; and Banerji J. may have had in mind the possible distinction between dismissal and confirmation indicated by Jenkins C. J. in *Kailash Chandra Bose v. Girija Sundari Debi*⁽¹⁾. Of the other cases cited for the respondent, *Patloji v. Ganu*⁽²⁾ was a case where there was no decision on final appeal but only a dismissal for non-prosecution in the final appeal and similar, therefore, to the decision of the Judicial Committee in *Abdul Majid v. Jawahir Lal*⁽³⁾ in which it was held that the time for executing a decree nisi for sale of mortgaged property ran from the date of the High Court decree confirming the decree of the first Court. *Aminabi v. Sidu*⁽⁴⁾ was a case where the decree had been legally executed before the appeal and the defendant never applied for a stay of execution or tendered the money payable by him till after the dismissal of the appeal. We also think that the decision in *Raja Bhup Indar Bahadur Singh v. Bijai Bahadur Singh*⁽⁵⁾ is an authority in the appellant's favour. What has to be looked at and interpreted is the decree of the final appellate Court, in this case the High Court.

We reverse the decree of the lower Court, set aside the defendant's objection and remand the plaintiff's application in execution for disposal according to law.

Defendant 7 to pay the costs of the objection throughout.

Decree reversed and case remanded.

G. B. R.

(1) (1912) 39 Cal. 925 at p. 929.

(3) (1914) 36 All. 350.

(2) (1890) 15 Bom. 370.

(4) (1892) 17 Bom. 547.

(5) (1900) L. R. 27 I. A. 209.