

(1922) 12 AHC CK 0025**Allahabad High Court****Case No:** None

Ajudhia Prasad

APPELLANT

Vs

Gobind Prasad

RESPONDENT

Date of Decision: Dec. 15, 1922**Citation:** (1923) ILR (All) 276**Hon'ble Judges:** Piggott, J; Muhammad Rafiq, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

Muhammad Rafiq and Piggott, JJ.

This is a second appeal by the plaintiff decree-holder in a pre-emption suit. The decree was on a compromise. The plaintiff was to pay to the defendant vendee, within thirty days, a specified sum. In this event of the defendant vendee refusing to accept the money when tendered, the plaintiff was given the option of depositing the sum in court. Failing such payment or deposit within the period limited, the suit was to stand dismissed. The decree was passed on the 29th of December, 1920. On the 2nd of February, 1921, the plaintiff asked the court to execute the decree by putting him in possession of the property. On the 9th of February, 1921, the opposite party, Gobind Prasad, objected that the money had neither been paid nor tendered within the period fixed. The courts below, after taking some evidence, have held that the plaintiff Ajudhia Prasad never tendered the money to Gobind Prasad out of court, but that he did deposit it in court within the period of thirty days limited by the decree. Both courts have held, as a question, of interpretation, that this deposit was not a sufficient compliance with the terms of the decree. The appeal before us is by the plaintiff Ajudhia Prasad. If we had merely to decide the point as it has been put in the judgment of the lower appellate court, we might have felt some little difficulty; but, on an examination of the record, we are satisfied that the appeal must fail. The question as to what actually happened in the interval between the passing of the decree and the application of the 2nd of February, 1921, is a little

complicated by the fact that the courts below have disbelieved Ajudhia Prasad's oral evidence as to a tender made out of court. The record does, however, establish certain facts. On the 12th of January, 1921, well within the period limited by the decree, Gobind, Prasad presented to the court an application, to the effect that the plaintiff Ajudhia Prasad was present with the money which he had been required to pay, and he asked that payment might be made and a receipt handed over in the presence of the court. Upon this the court officer called for Ajudhia Prasad, but he was not to be found. The court then ordered Gobind Prasad's petition to be filed. We know also that, on that very same day, namely, the 12th of January, 1921, Ajudhia Prasad went to the treasury and there deposited, to the credit of Gobind Prasad, the money which he had been directed to pay out of court. He never informed the court that this money had been so deposited, or asked the court to issue notice to Gobind Prasad of the fact that the money was lying to his credit in the treasury. On this state of facts, it seems sufficient to say that there had not, in our opinion, been any effective compliance with the provisions of the decree. This appeal, therefore, fails and we dismiss it with costs.