(1959) 01 MP CK 0012

Madhya Pradesh High Court (Gwalior Bench)

Case No: C.S.A. No. 18 of 1956

Babulal		APPELLANT
	Vs	
Kishanlal		RESPONDENT

Date of Decision: Jan. 28, 1959

Acts Referred:

- Gwalior Pre-emption Act, 1922 - Section 21(1)

Citation: (1959) MPLJ 707

Hon'ble Judges: Shiv Dayal Shrivastava, J

Bench: Single Bench

Advocate: A.E. Naokar, for the Appellant; R.K. Dixit, for the Respondent

Final Decision: Allowed

Judgement

Shiv Dayal, J.

This appeal raises an important question although it is not of usual occurrence now.

In a suit for pre-emption (Civil Suit No. 46 of 1996) the District Sub-Judge Sheopur passed a decree for pre-emption in favour of Kishanlal Respondent on 17th Septemer 1940. The direction in the decree was that a sum of Rs 400 should be deposited by the Plaintiff Kishanlal by the 17th October 1940. The decree-holder, in compliance with the said direction, deposited Rs. 338 in the Court, after deducting Rs. 62 on account of the costs allowed to him in the decree. On the same date the decree-holder presented an application for execution which was registered as No. 119 of Samvat 1997.

Aggrieved by the judgment and the decree dated the 17th September, 1940 the Defendant Babulal preferred an appeal to the Court of District Judge Morena (Appeal No. 62 of Samvat 1997). In the said appeal the District Judge passed an order for stay. Thereupon the decree-holder withdrew the amount deposited by him as the execution could not proceed because of the stay order.

On the 9th September 1946 the Defendant''s appeal was dismissed by the District Judge. He then applied for revision to the High Court of Gwalior State (Civil Revision No. 269 of Samvat 2003) but that too was dismissed on the 1st October, 1948. However, neither the appellate Court nor the first Court fixed any date for depositing the price afresh. Both the parties also kept quiet. Neither the Plaintiff nor the Defendant moved the appellate Court or the first Court for fixing a fresh date for depositing the price. The decree-holder made another application for execution on the 1st October, 1951 and he also deposited the same day a sum of Rs. 400 (Execution Case No. 179 of 1951 in the Court of Civil Judge Sheopur)

The judgment-debtor in the execution, objected to the maintainability of the execution on the grounds that the full amount was not deposited in the beginning; that the decree-holder had waived his right by withdrawing the decretal amount; that the application for execution was barred by time and that the decree-holder, in any event, was bound to deposit the price within one month from the date of the ultimate decision by the High Court on the 1st October, 1948 in Civil Revision No. 269 of Samvat 2003.

The Executing Court overruled all the objections of the judgment-debtor. Aggrieved by that order dated 17th February 1953, the judgment-debtor went in appeal but the learned Additional District Judge Morena dismissed the appeal on the 19th October 1955 in Civil Miscellaneous Appeal No. 8 of 1953 and it is from that judgment and decree that this second appeal has been preferred.

This appeal raises the question: what is the permissible period within which the decree-holder was to deposit the price ? When the first Court passed the decree, it did fix a time but on appeal a stay order was passed. The decree-holder was therefore justified in withdrawing that amount. After the stay order was vacated, the Court which passed the decree, was, u/s 21(2) of the Gwalior Pre-emption Act, to fix a fresh date for the decree-holder to deposit the amount. The minimum period which the Court can allow was one month and the maximum period was three months. Section 21 (1) of the Gwalior Preemption Act, Samvat 1992 runs thus:

A plain reading of the section shows that it is the duty of the Court to fix a fresh date when the stay order passed by the appellate Court becomes ineffective. That was not done in this case. Moreover, neither the decree-holder nor the judgment-debtor approached the Court for fixing a fresh date. The contention of the judgment-debtor is that that was none of his duty; it was for the decree-holder to get a date fixed and deposit the amount within that time. On the other hand, the decree-holder contends that it was for the Court to fix a date and if it did not fix any date, the decree did not become ineffective or inexecut-able. The line of argument of the decree-holder is simple. The decree gave him a right of pre-emption and depositing the money in the Court was an obligation. If the period was not fixed, it only meant that he was not obliged to do that act within any particular period. So long as his right to execute the decree was in limitation on this basis, the decree-holder contends, that he was

entitled to execute the decree within three years and he was entitled to deposit the money at any time within three years and this he did.

After hearing the elaborate arguments of Shri A. R. Naokar, Learned Counsel for the Appellant and Shri R. K. Dixit, Learned Counsel for the Respondent I have come to the conclusion that the dacree-holder did not deposit the amount within the time as required by law and, therefore, he has lost his right of preemption and the decree cannot be executed.

Under Section 21(1) of the Act, the maximum time which could be awarded to the decree-holder was three months. The stay order which was passed by the appellate Court became ineffective on the 9th September, 1946 when the Defendant''s appeal was dismissed by the District Judge. Three months from that date expired on the 9th December, 1946. Assuming that the Court did what it should have done, the maximum time that the Court could give to the decree-holder was upto the 9th December, 1946.

The nearest analogy is the case of a mortgage decree where the Court while passing a preliminary decree for redemption omits to fix a time within which the mortgagor should deposit the mortgage money. In such a case, it was held in 1921 Allahabad 56, that the maximum period which could be fixed by the Court can be available to the mortgagor but not more than that.

Then, stretching the argument of the Appellant to the farthest, he was bound to deposit the money within three years from the date when the stay order passed by the appellate Court became ineffective. In other words, the limit was upto September 9, 1949. But the decree-holder deposited the amount on October 1, 1951.

The fact that the Defendant made an application in revision to the High Court and that was dismissed, does not help the decree-holder on the point in issue. Section 21 (1) does not make any mention of proceedings in revision. It speaks only of an appeal. But stretching it still further and including a revision petition in the expression ''appeal'', the decree-holder gets no benefit because no stay order was passed by the High Court in revision. It has been laid down by the Supreme Court in Naguba Appa v. Namdev AIR 1954 S. C. 50, that:&#65533;

Mere filing of an appeal does not suspend the decree for pre-emption and unless that decree is altered in any manner by the Court of appeal the pre-emptor is bound to comply with its directions with regard to the deposit of amount within the fixed time.

And it has been further laid down in the same pronouncement of the Supreme Court that the dismissal of the suit on default in paying the purchase money within time allowed is mandatory.

I ooked at from any point of view, the decree-holder was too late in depositing the amount on the 1st October, 1951.

This appeal is, therefore, allowed, the judgments of both the Courts below are set aside and it is held that the decree is not executable. The Appellant shall get his costs throughout from the Respondent.