

Present : Ennis and De Sampayo JJ.

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SINNATAMBY *et al.* v. ANTHONYPILLAI *et al.*

406—D. C. Jaffna, 16,552.

Pre-emption—Decree declaring deed null and void—Order directing that a conveyance be executed in favour of plaintiff if he brings money into Court on specified date—Appeal by defendants—Judgment affirmed in appeal—No fresh date fixed by Supreme Court for depositing money—Motion by defendants that action be dismissed as money was not deposited on specified date—Jurisdiction—Civil Procedure Code, s. 200.

The decree in a pre-emption case declared the deed executed by the second defendant in favour of the first defendant null and void, and further decreed that the second defendant should execute a conveyance in favour of the plaintiff on a sum of Rs. 450 being brought into Court on August 2, 1922. The defendants appealed against this order, but obtained only some relief as to costs. The record was returned to the District Court on February 12, 1923. The judgment of the Supreme Court was silent as to the date for depositing the money by the plaintiff. The defendants applied to the District Court to have the action dismissed on the ground that the money was not deposited on August 2. The District Judge amended the decree, and allowed the plaintiff time to pay the amount.

Held, that the Court had no jurisdiction to make the order. But acting in revision the Supreme Court fixed a date for the deposit of the money.

THE facts are set out in the judgment.

Hayley (with him *J. Joseph*), for appellants.

Balasingham, for respondents.

April 11, 1924. ENNIS J.—

This is an appeal from an order amending a decree. It appears that the plaintiffs on July 20, 1922, obtained a decree declaring their right to pre-empt a certain land. The decree declared the deed executed by the second, third, and fourth defendants in favour of the first defendant null and void, and further decreed that the second, third, and fourth defendants should execute a conveyance in favour of the second plaintiff on the sum of Rs. 450 being brought into Court on August 2, 1922. The decree also gave the plaintiffs costs of the action. The defendants appealed from this decree, and carried

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the appeal through obtaining a variation of the decree in the matter of costs. The record and the appellate judgment was returned to the lower Court and received there on February 12, 1923. On June 29, 1923, the defendants applied to the District Court under section 200 of the Civil Procedure Code to have the plaintiffs' action dismissed with costs. On September 18, 1923, the District Court amended its previous decree, and allowed the plaintiffs time till October 15, 1923, to pay the balance of the Rs. 450 after deducting a sum of Rs. 87 odd, which the first defendant had paid into Court as the plaintiffs' costs of the first appeal. The defendants appeal from this order.

The appeal has been strongly urged on the ground that the learned District Judge had no jurisdiction to amend his decree, and it seems to me that this contention is good. An Indian case of *Jaggar Nath Pande v. Jokhu Tewari*¹ was cited in support of the appellants' contention. In that case the Court on principle held that the full pre-emptive price not having been paid on or before the specified date, the decree became operative as a decree dismissing the plaintiffs' suit with costs, and that the Court of first instance had no power to pass an order allowing the plaintiff to pay the balance of the pre-emptive price into Court and to execute a decree which could only be executed against the plaintiff by the defendant. That case clearly turned on the question of jurisdiction, and on that ground the contention of the appellants in this case is right, but there are some other matters to be noticed in connection with this case which render it equitable that this Court should consider the matter in revision. The decree in the Court below did not conform with section 200 of the Civil Procedure Code. It did not declare that on default of payment the action of the plaintiffs should stand dismissed with costs. The defendants in their previous appeal did not draw the attention of the Supreme Court to the fact that as this money had not been paid they were entitled to have the plaintiffs' action dismissed with costs. The Supreme Court in appeal varied the decree and did not affirm it, and did not add a declaration in the alternative dismissing the plaintiffs' action for non-payment within a specified time. The plaintiffs had paid in a sum of Rs. 320 before the decree as a consideration for the transfer they asked for. There was a balance of Rs. 130 to be paid after the decree had been made. The plaintiffs appear to have been under the impression that they were entitled to set off against this the sum which they could recover from the defendants by way of costs under the original decree, and it would seem that certain negotiations took place between the parties with regard to this.

In these circumstances I am of opinion that the learned Judge's order is equitably right. It fails only on this point of jurisdiction, and while setting aside the order, I would in revision amend the

original decree by declaring the plaintiffs entitled to a conveyance in their favour on payment of the full sum of Rs. 450 into Court on or before the expiration of one month from the date of the receipt of the record in the Court below, unless the same has already been paid in, in which event they will be entitled to a conveyance at once.

I would make no order for costs on appeal.

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DE SAMPAYO J.—I agree.

Decree amended.

