

present appellants. In the peculiar circumstances of the case, the parties will pay their own costs.

R.M./R.K.

Appeal accepted.

A. I. R. 1917 Lahore 400

JOHNSTONE, C. J. AND SUAH DIN, J.

Jam Hamid Ali and others—Decree-holders—Appellants.

v.

Kaim Din and another—Judgment-debtors—Respondents.

Second Appeal No. 2107 of 1913, decided on 5th February, 1917, from the Order of Divl. Judge, Multan, dated 19th May, 1913.

Civil P. C. (5 of 1908), O. 20, R. 14—Applicability—Pre-emption suit—Decree in terms of compromise—Compliance with decree.

Plaintiff in a pre-emption suit was given a decree in terms of a compromise, according to which he was *inter alia* to separate off and give to defendant a certain area of land within one month from the date of the decree. Before the expiration of that period plaintiff ceased to cultivate the area mentioned in the decree, with the intention to let the defendant have possession of the land:

Held, (1) that inasmuch as the decree was based upon a compromise, it was not a decree in a pre-emption suit to which the provisions of R. 14, O. 20. of the Civil Procedure Code could apply; and [P. 401, C. 1.]

(2) that even if it was a decree in a pre-emption suit, plaintiff had substantially complied with its terms. [P. 401, C. 2.]

Muhammad Iqbal—for Appellants.

Hargopal—for Respondents.

Judgment.—This appeal has arisen out of execution proceedings relating to a decree for pre-emption, dated the 29th May, 1912, which was passed in favour of the appellants against the respondent Goda Khan; and the sole question for decision in the appeal is, whether the terms of the decree were not complied with by the appellants within the period of one month mentioned in the decree, with the result that the decree became null and void and the suit stood dismissed with costs.

The facts are fully stated in the orders of the Courts below and it is necessary to repeat them. The decree was given to the appellants in terms of a compromise between the parties, according to which the appellants were to pay into

Court, within one month from the date of the decree, Rs. 528-11-0, being part of the purchase-money, and also to separate off and give to the respondent Goda Khan within the same period of one month ten *bighas* of land on the eastern side of *Patti Sera Wali*. The contention on behalf of the respondent is that although the sum of money, Rs. 528-11-0, was paid into Court by the appellants within the period fixed, they did not separate off and hand over to the respondent possession of ten *bighas* on the eastern side of *Patti Sera Wali* within the said period; and it has accordingly been urged that the decree not having been complied with according to its terms, became void and the suit stood dismissed with costs.

It seems clear to us that since the decree was based upon, and was passed in accordance with, a compromise, strictly speaking, it was not a decree in a pre-emption suit to which the provisions of R. 14 of O. 20, Civil Procedure Code, are applicable, and that the appellants, who are decree-holders, cannot get the benefit of the consent decree in question unless they shew that its terms were duly carried out. Upon this view of the case, the appellants had to separate off and give up possession of ten *bighas* on the eastern side of *Patti Sera Wali* for the benefit of the respondent; and the only point for decision is whether this was done by the appellants or not. It is, no doubt, true that no notice through the executing Court was given by the appellants to the respondent within one month from the date of the decree asking the latter to take possession of the land in question, nor were any mutation proceedings started at the appellants' instance within the period fixed. But it appears from the record that before the period mentioned in the decree had expired, the appellants had ceased to cultivate the ten *bighas* situate on the eastern side of the *patti*, the clear intention being to let the respondent have possession of the land as agreed upon between the parties. The parties reside in the same village; in fact, respondent Goda Khan is landlord of the land sold and of the land in possession of the appellants in *Patti Sera Wali*, of which the appellants are occupancy tenants; and in the circumstances indicated above, the respondent was clearly in a position to take possession of the ten

bighas in question which had been left vacant by the appellants. He, however, never moved in the matter, and omitted to take possession within one month from the date of the decree, and this omission was doubtless due to his desire to defeat by a technical plea the provisions of the decree which had been passed in favour of the appellants. We have no hesitation in holding that by leaving the land uncultivated within the period fixed in the decree, so as to enable the respondent Goda Khan to take possession of it, the appellants substantially complied with its terms; and that the decree has not become null and void.

We accept the appeal and setting aside the order of the lower Appellate Court, send the case back with a direction that execution of the decree be proceeded with at the instance of the appellants. The appellants will get their costs throughout.

R.M./R.K.

Appeal accepted.

A. I. R. 1917 Lahore 401

SHAH DIN, C. J.

Sardara and others—Plaintiffs—Appellants.

v.

Modan and another—Defendants—Respondents.

Second Appeal No. 2817 of 1916, decided on 17th April, 1917, from the Decree of Dist. Judge, Ludhiana, dated 13th July, 1916.

Custom (Punjab) — Alienation — Widow — Legal necessity — Payment of mortgage-debt of next reversionary heir is not for legal necessity.

A widow can sell her deceased husband's property only in order to liquidate the just antecedent debts of her husband or to raise money for a legal necessity. She is not justified in selling her husband's land in order to pay off a mortgage-debt due by the next reversionary heir of her husband. [P. 402, C. 1.]

Gulla Ram—for Appellants.

Tek Chand—for Respondents.

Judgment.—The District Judge was obviously wrong in allowing item No. (2), Rs. 400, of the items that make up the consideration money for the sale in dispute; for the sum in question was left by the widow of Ramun with the vendee for payment to one Kirpa Ram, a mortgagee of the land of Dasundha Singh;