

(1927) 05 AHC CK 0017
In the Allahabad High Court

(Bhaiya) Sanoman Singh and Others

APPELLANT

Vs

Raja Ram and Others

RESPONDENT

Date of Decision : 02-05-1927

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144

Citation : AIR 1927 All 848 : (1928) ILR (All) 68

Judgement

1. The question that arises for consideration in the present appeal is whether an appealable decree, against which an appeal has not been filed, becomes final on the expiry of the period of limitation prescribed for filing an appeal from that decree; or does the decree become final on the very day on which it was passed. Both the Courts below have held that a decree capable of being appealed against does not become final till the expiry of the period prescribed for filing an appeal against that decree.

2. The facts that led to the present appeal are as follows: Ram Harakh Pande, the respondent, obtained a decree for pre-emption against the appellants on the 16th March 1921. The decree in favour of the respondent was conditional on the payment by him of the purchase-money within 30 days from the date of the decree becoming final. The appellants appealed against that decree and the first appellate Court, on the 30th June 1921, dismissed the appeal. The purchase-money was deposited by the respondent more than 30 days after the 30th June 1921, viz., on the 1st August 1921. After depositing the purchase-money the respondent applied for delivery of possession of the property pre-empted by him and delivery of possession was made over to him on the 30th June 1922. On the 5th November 1923 the appellants filed an application for restitution u/s 144, Civil P.C., and asserted that the decree of the trial Court became final on the 30th June 1921, that is, on the date on which the first appellate Court dismissed the appeal filed by the appellants. The respondents maintained that the decree of the trial Court that was affirmed by the first appellate Court did not become final till after (SIC) expiry of the period allowed for filing an appeal from the decree of the first appellate Court; i.e., till after the expiry of 90 days from the 30th June

1921, and therefore the purchase-money had been deposited by him well within time. In our judgment the view of law taken by the Courts below is perfectly correct.

3. We are not unaware of the decisions in *Hingan Khan v. Ganga Prasad* [1878] 1 All. 298, and *Sibta v. Badri Prasad* [1881] 3 All. 134, but, with all respect, we are unable to agree with those decisions.

4. It appears to us that an appealable decree can only become final when the time allowed for filing on appeal against that decree has expired without an appeal being filed. Till then the decree is capable of being challenged by an appeal and therefore during that period it cannot be said that the decree has become final, or, in other words, has become unassailable. This was the view taken by this Court in the cases of *Disa Singh v. Jaula Singh* [1881] A.W.N. 185, *Shaikh Ewaz v. Mokuna Bibi* [1878] 1 All. 132, *Ram Sahai v. Gaya* [1884] 7 All. 107, *Gopaldas v. Mamma Kunwar* [1908] 5 A.L.J. 136, and *Fazal Husain v. Fazaluddin* AIR 1026 All. 291. We are in complete agreement with the view of law taken in the cases noted above, and accordingly we dismiss the appeal with costs.