

(1923) 03 AHC CK 0056
In the Allahabad High Court

Bhupal Singh and Others

APPELLANT

Vs

Girdhari Singh and Another and Shamli Singh

RESPONDENT

Date of Decision : 15-03-1923

Acts Referred:

Citation : (1923) ILR (All) 456

Hon'ble Judges : Muhammad Rafiq, J; Lindsay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Muhammad Rafiq and Lindsay, JJ.—This second appeal arises out of a pre-emption suit. The question before us is whether the lower appellate court had a right to extend the time for payment into court of the pre-emption money.

2. It appears that the plaintiffs were given a decree for preemption, by which they were required to pay a sum of Rs. 800 into court within a period of thirty days from the decision of the first court's decree. That decree was passed three days before the courts closed for the long vacation, so that we have it that the plaintiffs had really only a period of three days to deposit the money.

3. An application was made after the vacation for the reception of the money by the court. The application was declined (sic) the ground that the court had no authority to extend the one.

4. The plaintiffs appealed to the District Judge. In the memorandum of appeal as presented, the only ground taken was that the price which had been fixed by the court below was excessive. It seems, however, that at a later stage the plaintiffs were allowed to add another ground of appeal, taking exception to the short time which the first court had allowed for payment into court of the pre-emption money.

5. The lower appellate court agreed with the first court regarding the sum which the plaintiffs pre-emptors were bound to pay, i.e., Rs. 800. The learned Judge in

his judgment found that the time which had been allowed to the plaintiffs for paying the money into court was too short. Consequently, although he upheld the first court regarding the amount of pre-emption money, he thought that he was entitled to extend the time and he extended it accordingly.

6. In view of the rulings which have been cited to us, namely Kodai Singh v. Jaisri Singh ILR (1889) All. 189 and Khurshed-un-nissa v. Alim-un-nissa (1912) 10 A.L.J. 421 it appears to us that this appeal cannot succeed. According to these judgments the court below had a discretion to extend the time. If that discretion has been judicially exercised this Court does not interfere in second appeal. We, therefore, dismiss the appeal with costs.