Privy Council Appeals Nos. 95 *and* 96 *of* 1913.
Bengal Appeals Nos. 62, 63, 64, *and* 65 *of* 1910.

Deonandan Prashad Singh - - - - *Appellant*,

v.

Ramdhari Chowdhri and Others - - - *Respondents*,

Baijnath Ram Goenka - - - - *Appellant*,

v.

Ramdhari Chowdhri and Others - - - *Respondents*,

Ramdhari Chowdhri and Others - - - *Appellants*,

v.

Baijnath Ram Goenka and Another - - *Respondents*,

Ramdhari Chowdhri and Others - - - *Appellants*,

v.

Deonandan Prashad Singh and Another - *Respondents*,

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 11TH DECEMBER, 1916.

Present at the Hearing:

THE LORD CHANCELLOR.
LORD ATKINSON.
LORD WRENBURY.
MR. AMEER ALI.

[*Delivered by* THE LORD CHANCELLOR.]

The question in these appeals affects the right to mesne profits of certain lands which, by virtue of three different sets of judgments—*first*, two decrees of the Subordinate Judge on the 31st March, 1900; *secondly*, two decrees of the High Court at Calcutta on the 20th January, 1904; and *thirdly*, an Order in Council on the 25th January, 1908—have been alternately in the possession of Deonandan Prashad Singh and Baijnath Ram Goenka or their predecessors in title (hereafter, for convenience, called the appellants), Ramdhari Chowdhri and others or their predecessors in title (hereafter called the respondents), and, finally, of the appellants again. The explanation of this changing occupation is to be found in the nature of the proceedings in which those orders were made.

On the 30th June, 1898, two suits were brought by the two predecessors of the appellants each claiming a right to pre-empt a half share in certain property known as Taluka Rasulpur Bhatowni, which, on the 17th December, 1897, one Anupbati Koeri sold to Nirbhoy Chowdhri. The sale was alleged by the purchaser to have been made for 44,850 rupees, and this amount was stated as the consideration in the deed of sale. The plaintiffs' right to pre-empt does not seem to have been questioned; the only matter in dispute was whether they had made, in accordance with the rules of the Mahommedan law to which the right is subject, the "demands," which are a condition precedent to the exercise of the rights of pre-emption. The plaintiffs alleged they had duly performed the necessary formalities and also that they had offered to pay the full purchase price. The purchaser, however, declined to recognise their rights, and it accordingly became necessary to institute proceedings. Unfortunately, in those proceedings, the plaintiffs challenged the reality of the purchase price named in the deed, and alleged that the real purchase price was 37,000 rupees, and not 44,850. The defendant denied the right of pre-emption, and asserted that the full consideration was the true consideration for sale. The plaintiffs succeeded on both their contentions, and, by the decrees of the 31st March, 1900, to which reference has been made, the Subordinate Judge ordered that each of the plaintiffs should, within one month from the date thereof, deposit in the Court 18,500 rupees—half of the 37,000 rupees the price of the property claimed, and then be awarded possession of the half share of the property claimed by right of pre-emption. The money was duly paid by both the plaintiffs, and possession of the estate was delivered to them on the 19th July, 1900.

The judgment of the High Court reversed this judgment and set aside these decrees, declaring that there was no right of pre-emption, and that the full consideration for the sale was 44,500 rupees. Possession of the estate was accordingly re-delivered to the original purchaser on the 20th July, 1904.

The Order of the Privy Council on appeal from the High Court was dated the 25th January, 1908; this declared that the right of pre-emption existed, and that the purchase price was that stated in the deed; accordingly the decrees of the High Court were discharged, and it was further ordered that the decrees of the Subordinate Judge should—

". . . . be varied by calculating the price of pre-emption on the sum of 44,850 rupees instead of on the sum of 37,000 rupees and by ordering the amounts in question to be deposited by the respective appellants in the Court of the said Subordinate Judge within such times as the said High Court or the Court of the said Subordinate Judge may determine that subject to these variations and the payment to the appellants of additional costs (if any) properly incurred by them, the said decrees of the Court of the said Subordinate Judge be and the same are hereby remitted to the said High Court in order that the necessary steps may be taken for the disposal thereof on the above footing."

It appears that during all this time the two sums of 18,500 rupees had remained in Court, uninvested as the appellants suggest, though their Lordships cannot but think it unlikely that so large a sum should be left idle during the whole long and indeterminate time of Indian litigation. Accordingly the plaintiffs were only bound to find the balance of 7,850 rupees, and this having been done the plaintiffs were restored to possession on the 19th January, 1909.

In working out the Order in Council, a question has naturally arisen as to the right to mesne profits between the 19th July, 1900, and the 19th January, 1909. The respondents, as representing the original purchaser, claim to be entitled to the whole mesne profits between these dates upon the ground that the appellants are only in possession under the Order in Council. The appellants, on the other hand, assert their right because they urge they were rightly in possession under the original decrees, and that that possession was wrongfully taken away by the Order of the High Court. The High Court, from whom the present appeal has been brought, have settled the matter by giving mesne profits during the one period to the appellants, and during the other period to the respondents. But though this Order might be a fair way of adjusting the rival claims of the parties were they uncontrolled by statute, their Lordships are unable to find that they are free to deal with it in this manner.

A person claiming an order of pre-emption cannot be regarded in the same light as an ordinary purchaser of an estate. His right is, when an estate has been sold, to acquire the property from the purchaser at the price paid. If the necessary formalities are observed, and the purchaser assents to the claim, possession is given by mutual consent and no difficulty arises; but if the claim be disputed and suit must be brought, the rights of the parties are regulated by the Code of Civil Procedure, which in this respect embodies the principle of the Mahommedan law. Section 214 of the Code of 1882 is in these words :—

> "214. When the suit is to enforce a right of pre-emption in respect of a particular sale of property, and the Court finds for the plaintiff, if the amount of purchase-money has not been paid into Court, the decree shall specify a day on or before which it shall be so paid, and shall declare that on payment of such purchase-money, together with the costs (if any) decreed against him, the plaintiff shall obtain possession of the property, but that if such money and costs are not so paid the suit shall stand dismissed with costs."

It therefore follows that where a suit is brought it is on payment of the purchase money on the specified date that the plaintiff obtains possession of the property, and, until that time, the original purchaser retains possession and is entitled to the rents and profits. This was so held in the case of *Deokinandan* v. *Sri Ram* (I.L.R. 12, Allahabad, 234), and there Mr. Justice Mahmud, whose authority is well recognised by all, stated that

it was only when the terms of the decree were fulfilled and enforced that the persons having the right of pre-emption become owners of the property, that such ownership did not vest from the date of sale, notwithstanding success in the suit, and that the actual substitution of the owner of the pre-empted property dates with possession under the decree.

Now, in the present case, the decrees under which possession was given of the pre-empted property are the decrees of the Subordinate Judge, not, indeed, those of the 31st March, 1900, but those decrees as varied by the Order in Council of the 25th day of January, 1908, for at that date the original decrees of the Subordinate Judge had been set aside, and were only restored upon the terms mentioned in the judgment of the Privy Council. So varied, they provided that upon the deposit by each plaintiff of 22,425 rupees —half of the 44,850 rupees—he should then be awarded possession. Until that deposit was made possession could not be taken. If it had not been made, possession could never have been assumed at all, and, in their Lordships' opinion, it follows that the plaintiffs only obtained possession within the meaning of the Code in pursuance of that order, that is to say on the 19th January, 1909.

Their Lordships fear that this opinion, to which they are compelled by the terms of the Code, may involve some hardship upon the plaintiffs; but it must be remembered that this is due to two matters, one of which was wholly and the other to some extent under the plaintiffs' control. The first and the fundamental error was in challenging the consideration for the sale. Apart from this, their possession would have been lawful throughout, and the Order in Council would merely have confirmed the decrees of the Subordinate Judge and prevented the decree of the High Court from having any effect. But, apart from this, their loss might have been materially lessened had they proceeded with diligence in their appeal from the judgment of the High Court. This was given on the 21st January, 1904, and it was not till four years afterwards that the matter came before the Judicial Committee for decision, though there need be no delay in the hearing of appeals when once they are entered here. The 30th June, 1898, was the date when proceedings were commenced, and it is not until nearly ten years afterwards that the final decree is obtained. Their Lordships realise and desire to make full allowance for the difficulties due to translation of documents, printing, and preparation of the record, and all the circumstances attaching to habits and ideas different from their own; but delay in litigation means to every one concerned, in whatever country he may be, needless expense, anxiety, and disappointment, and to the poor and honest suitor it is an oppression hard to be borne.

In the result, therefore, the appellants fail and the respondents succeed. Their Lordships will therefore humbly

advise His Majesty that the two decrees of the High Court, both dated the 25th February, 1910, made in Appeals Nos. 365 and 366 of 1909, should be affirmed, and that the two decrees of the High Court, both dated the 25th February, 1910, made in Appeals Nos. 537 and 538 of 1909, should be set aside except as to costs, and that the decrees of the Court of the Subordinate Judge dated the 28th August, 1909, should be restored except as to costs. It follows that the appellants' appeals should be dismissed and the respondents' cross-appeals allowed. As regards costs, the High Court ordered each party to bear their own costs in both the Indian courts. This part of the High Court's order will not be disturbed, and there will be no costs in these appeals.

In the Privy Council.

DEONANDAN PRASHAD SINGH

v.

RAMDHARI CHOWDHRI AND OTHERS.

BAIJNATH RAM GOENKA

v.

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DELIVERED BY

THE LORD CHANCELLOR.

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