1963

February 20.

JANG SINGH

v.

BRIJLAL AND ORS.

(B. P. SINHA, C. J., M. HIDAYATULLAH and J. C. SHAH JJ.)

Pre-emption—Deposit of one rupee less in Court under order of court—Litigant not to suffer—Act of Court should harm no one.

The appellant filed a suit for pre-emption for the sale of certain lands against the first respondent. A compromise decree was passed in favour of the appellant and he was directed to deposit Rs. 5951/-, less Rs. 1000/- already deposited. The suit was to stand dismissed with costs if the deposit was not made punctually. The appellant made an application to the Subordinate Judge for making the deposit of the balance of the amount. The clerk of the Court prepared a challan in duplicate and handed it over to the appellant. In the challan Rs. 4950/- were mentioned instead of Rs. 4951/-. The money was deposited by the appellant. Later on, it was pointed out that the deposit was short by Re. 1. The Subordinate Judge accepted the objection and set aside the decree for pre-emption passed in favour of the appellant. The order of the Subordinate Judge was set aside by the District Judge. It was held that the Court and its clerk made a mistake by ordering the appellant to deposit an amount which was less by Re. 1/- and hence the appellant was excused in as much as the responsibility was shared by the Court. The decision of the District Judge was set aside by the High Court and the appellant came to this Court by special leave.

Held, that the decision of the District Judge was correct and the appellant was ordered to deposit Re. 1/- in the court of the Subordinate Judge. The appellant was an illiterate person and the Court and its officers had largely contributed to the error committed by him. It is true that the litigant must be vigilant and take care, but where a litigant goes to the court and asks for its assistance, so that this obligation under a decree might be fulfilled by him strictly, it is incumbent on the Court, if it does not leave the litigant to his own devices to ensure that the correct information is furnished. If the Court in supplying the information makes a mistake, the responsibility of the litigant, though it does not altogether cease,

1963

Jang Singh v. Brijlal

is at least shared by the Court. If the litigant acts on the faith of that information, the court cannot hold him responsible for a mistake which it itself caused. No act of Court should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of Court, he should be restored to the position he would have occupied but for that mistake.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 687 of 1962.

Appeal by special leave from the judgment and decree dated December 1, 1961, of the Punjab High Court at Chandigarh, in Execution Second Appeal No. 586 of 1960.

K. L. Mehta, for the appellant.

K. L. Gosain, K. K. Jain and *P. C. Khanna*, for the respondents Nos. 2 to 6.

1963. February 20. The judgment of the Court was delivered by

Hidayatullah J.

HIDAYATULLAH J.—This appeal with the special leave of this Court arises out of execution of a decree for pre-emption passed in favour of the appellant Jang Singh. By the order under appeal the High Court has held that Jang Singh had not deposited the full amount as directed by the decree within the time allowed to him and his suit for pre-emption must therefore be ordered to be dismissed and also the other proceedings arising therefrom as there was no decree of which he could ask execution.

The facts of the case are simple. Jang Singh filed a suit for pre-emption of the sale of certain lands against Brij Lal the first respondent (the vendor), and Bhola Singh the second respondent (the vendee) in the Court of Sub-Judge 1st Class, Sirsa. On October 25, 1957, a compromise decree was passed in favour of Jang Singh and he was directed to

deposit Rs. 5951 less Rs. 1000 already deposited by him by May 1, 1958. The decree also ordered that on his failing to make the deposit punctually his suit would stand dismissed with costs. On January 6, 1958, Jang Singh made an application to the Sub Judge, Sirsa, for making the deposit of the balance of the amount of the decree. The Clerk of the Court, which was also the executing Court, prepared a challan in duplicate and handed it over with the application to Jang Singh so that the amount might be deposited in the Bank. In the challan (and in the order passed on the application, so it is alleged) Rs. 4950 were mentioned instead of Rs. 4951. Jang Singh took the challan and the application and made the deposit of the wrong balance the same day and received one copy of the challan as an acknowledgement from the Bank.

In May, 1958, he applied for and received an order for possession of the land. It was reported by the Naib Nazir that the entire amount was deposited in Court. Bhola Singh then applied on May 25, 1958, to the Court for payment to him of the amount lying in deposit and it was reported by the Naib Nazir on that application that Jang Singh had not deposited the correct amount and the deposit was short by one rupee. Bhola Singh applied to the Court for dismissal of Jang Singh's suit, and for recall of all the orders made in Jang Singh's favour. The Sub Judge, Sirsa, accepted Bhola Singh's application observing that in pre-emption cases a Court had no power to extend the time fixed by the decree for payment of the price and the pre-emptor by his failure to deposit the correct amount had incurred the dismissal of the suit under the decree. He ordered also the reversal of the earlier orders passed by him in favour of Jang Singh and directed that possession of the fields be restored to the opposite party.

Jang Singh appealed against that order. The

1963

Jang Singh v. Brijlal

Hidayatullah J.

District Judge recorded the evidence of the Execution Clerk, the Revenue Accountant, Treasury Office and Jang Singh. He also examined Bhola Singh. The learned District Judge held that the record of the case showed that on the day the case was compromised and the decree was passed Jang Singh was not present and did not know the exact decretal amount. The learned District Judge assumed that it was the duty of Jang Singh to be punctual and to find out the exact amount before he made the deposit. He, however, held that as Jang Singh had approached the Court with an application intending to make the deposit to be ordered by the Court, and the Court and its clerk made a mistake by ordering him to deposit an amount which was less by one rupee, Jang Singh was excused in as much as the responsibility was shared by the Court. The learned District Judge, therefore, held that this was a case in which Jang Singh deserved to be relieved and he came to the conclusion that Jang Singh was prevented from depositing the full amount by the act of the Court. He concluded "thus the deposit made was a sufficient compliance with the terms of the decree". The order of the Sub Judge, Sirsa dismissing the suit was set aside.

Bhola Singh appealed to the High Court. This appeal was heard by a learned single Judge who was of the opinion that the decree which was passed was not complied with and that under the law the time fixed under the decree for the payment of the decretal amount in pre-emption cases could not be extended by the Court. He also held that the finding that the short deposit was due to an act of the Court was unsupported by evidence. He accordingly set aside the decision of the learned District Judge and restored that of the Sub-Judge, Sirsa.

The facts of the case almost speak for themselves. A search was made for the application on

which the order of the Court directing a deposit of Rs. 4950 was said to be passed. That application remained untraced though the District Judge adjourned the case more than once. It is, however, quite clear that the challan was prepared under the Court's direction and the duplicate challan prepared by the Court as well as the one presented to the Bank have been produced in this case and they show the lesser amount. This challan is admittedly prepared by the Execution Clerk and it is also an admitted fact that Jang Singh is an illiterate person. The Execution Clerk has deposed to the procedure which is usually followed and he has pointed out that first there is a report by the Ahlmed about the amount in deposit and then an order is made by the Court on the application before the challan is prepared. It is, therefore, quite clear that if there was an error the Court and its officers largely contributed to it. It is no doubt true that a litigant must be vigilant and take care but where a litigant goes to Court and asks for the assistance of the Court so that his obligations under a decree might be fulfilled by him strictly, it is incumbent on the Court, if it does not leave the litigant to his own devices, to ensure that the correct information is furnished. If the Court in supplying the information makes a mistake the responsibility of the litigant, though it does not altogether cease, is at least shared by the Court. If the litigant acts on the faith of that information the Courts cannot hold him responsible for a mistake which it itself caused. There is no higher principle for the guidance of the Court than the one that no act of Courts should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim :

"*Actus curiae neminem gravabit*".

In the present case the Court could have ordered

1963

Jang Singh
v.
Brijlal

Hidayatullah J.

Jang Singh to make the deposit after obtaining a certified copy of the decree thus leaving it to him to find out the correct amount and make the correct deposit. The Court did not do this. The Court, on the other hand, made an order and through its clerk prepared a challan showing the amount which was required to be deposited. Jang Singh carried out the direction in the order and also implicit in the challan, to the letter. There was thus an error committed by the Court which the Court must undo and which cannot be undone by shifting the blame on Jang Singh. To dismiss his suit because Jang Singh was also partly negligent does not exonerate the Court from its responsibility for the mistake. Jang Singh was expected to rely upon the Court and its officers and to act according to their directions. That he did so promptly and fully is quite clear. There remains, thus, the wrong belief induced in his mind by the action of the Court that all he had to pay was stated truly in the challan and for this error the Court must take full responsibility and it is this error which the Court must set right before the suit of Jang Singh can be ordered to be dismissed. The learned single Judge of the High Court considered the case as if it was one of extension of time. He reversed the finding given by the District Judge that the application made by Jang Singh did not mention any amount and the office reported that only Rs. 4950 were due. The learned single Judge exceeded his jurisdiction there. It is quite clear that once the finding of the District Judge is accepted—and it proceeds on evidence given by Jang Singh and the Execution Clerk—the only conclusion that can be reached is that Jang Singh relied upon what the Court ordered and the error, if any, was substantially the making of the Court. In these circumstances, following the well-accepted principle that the act of Court should harm no one, the District Judge was right in reversing the decision of the Sub-Judge, Sirsa. The District Judge was, however, in error in

holding that the decree was "sufficiently complied with". That decree could only be fully complied with by making the deposit of Re. 1 which the District Judge ought to have ordered.

In our opinion the decision of the learned single Judge of the High Court must be set aside. The mistake committed by the Court must be set right. The case must go back to that stage when the mistake was committed by the Court and the appellant should be ordered to deposit the additional rupee for payment to Bhola Singh. If he fails to make the deposit within the time specified by us his suit may be dismissed but not before. We may point out however that we are not deciding the question whether a Court after passing a decree for pre-emption can extend the time originally fixed for deposit of the decretal amount. That question does not arise here. In view of the mistake of the Court which needs to be righted the parties are relegated to the position they occupied on January 6, 1958, when the error was committed by the Court which error is being rectified by us *nunc pro tunc.*

The appeal is, therefore, allowed. The appellant is ordered to deposit Re. 1 within one month from the date of the receipt of the record in the Court of the Sub-Judge, Sirsa. In view of the special circumstances of this case there shall be no order about costs throughout.

Appeal allowed.