

APPELLATE CIVIL.

Before D. N. Mitter and S. K. Ghose JJ.

ANNA BATI DASEE

v.

PARAMESHWAR MALLIK*.

1936

Aug. 7.

*Appeal—Memorandum, if can be accompanied by a part of the decree only—
Code of Civil Procedure (Act V of 1908), O. XLI, r. 1 ; s. 151.*

Where the decree is divisible and the appeal is confined only to a portion of the decree, it is permissible to the appellant, as being sufficient for the purposes of O. XLI, r. 1, of the Code, to file along with the memorandum of appeal only that portion of the decree against which the appeal is directed.

It is possible to read the language of O. XLI, r. 1 to mean that the memorandum shall be accompanied by a copy of that part of the decree appealed from against which the grounds of appeal are all directed. And in any event the Court can always exercise its inherent powers under s. 151 of the Code in such cases to dispense with the filing of the unnecessary portions of a decree by the appellant.

APPLICATION IN APPEAL FROM ORIGINAL DECREE
by the appellant.

The facts of the case and the points urged in the arguments by the parties are sufficiently stated in the judgment.

Prakash Chandra Bhose for the appellants,
petitioners.

Bankim Chandra Banerji (with him *Pannalal Chatterji* and *Radhika Ranjan Guha*) for the respondents, opposite party.

D. N. MITTER J. It appears that the appellants filed an appeal against the final decree in a suit for partition. The main grounds on which this appeal has been rested relate to an omission of the provision for maintenance of the appellants in the final decree

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for partition and, although there are three grounds which possibly might lend colour to the contention of the respondents that the appeal is directed against the allotment made by the final decree, the learned advocate for the appellants is now prepared to delete those three grounds and to confine his case only to the question of maintenance. It appears that the memorandum of appeal was presented on June 28, 1935; and on July 17, 1935, the Registrar passed this order :—

Let the part of the decree be accepted at present subject to objection by the respondents when they appear.

The report of the Commissioner, which included a large number of maps, was made a part of the decree. The portion of the certified copy of the decree, which was filed with the memorandum of appeal, included the Commissioner's report but not the maps which form a part of the report of the Commissioner. The question is whether the memorandum of appeal conforms to the provisions of O. XLI, r. 1, of the Code of Civil Procedure, which enacts that—

Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and unless the Appellate Court dispenses therewith of the judgment on which it is founded.

It is contended on behalf of the respondents that the memorandum of appeal does not conform to the provisions of O. XLI, r. 1, seeing that the appellants have not filed a copy of the entire decree. Question arises, where the decree is divisible in the sense that it contains a part with regard to allotments to different parties in a partition suit and makes no provision for maintenance for some of the members of the family, whether in such circumstances that portion of the decree which relates to allotment need also be filed along with the memorandum of appeal if the appeal is directed to the question of maintenance only. One should take a sensible view of the statute.

There does not seem any sense in filing the unnecessary and expensive certified copy of the Commissioner's report including the map where no objection is taken to the allotment made by the Commissioner and the appeal is only confined to that portion of the decree which does not direct or make any provision for maintenance of the appellants. It is possible to read the language of the statute to mean that the memorandum shall be accompanied by a copy of that part of the decree appealed from and against which the grounds of appeal were all directed. But even if we have any doubt with regard to strict and literal interpretation of O. XLI, r. 1, we can exercise, in the circumstances like the present, our inherent powers under s. 151 of the Code of Civil Procedure, which says—

Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

In our opinion, there does not seem to be any sense in asking the appellants to file the maps forming part of the decree, although the appellants' grounds of appeal are only limited to the question of maintenance. The cost for taking a certified copy of the maps is considerable, for it appears that their printing cost is about Rs. 694. In these circumstances, we overrule the objection of the respondent and hold that the part of the decree which has already been filed will be sufficient and the memorandum of appeal is in order. In our opinion, the appeal, in the circumstances, is in order.

This application of the appellants to exclude the maps from the list of papers to be printed is granted, subject to the condition that the appellants delete the grounds other than the grounds which they want to take for making a provision for grant of maintenance.

S. K. GHOSE J. I agree.

Application allowed.