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hospital expenses and the fees paid to the lawyer for prosecuting the defendants were claimed as actual damages.

It is of course not necessary for me to decide whether such fees could be claimed; but considering the nature of the suit as set forth in the plaint and the ruling of the Calcutta High Court to which reference has been made, I am of opinion that the suit was one of the nature cognizable by the Small Cause Court, and that, therefore, no second appeal lay to this Court.

Some suggestion was made that, in deciding this point, I should refer to the new Small Cause Courts Act (IX of 1887); but in this case the second appeal was instituted on the 2nd August, 1886, and the consideration of the new law would be unnecessary upon general principles of construing statutes, and, indeed, those general principles have been duly given effect to in clause (3) to s. 3 of this enactment itself, which provides that the new enactment is not to affect any proceedings before or after decree in any suit instituted before the commencement of the Act. It is therefore clear that the new Act is not applicable, and, as I have already said, under the old Act, this was a Small Cause Court suit, and, being of less value than Rs. 500, was not a fit one for being made the subject of second appeal under s. 586 of the Civil Procedure Code. The appeal is dismissed with costs (1).

Appeal dismissed.

Before Mr. Justice Mahmood.

1887
August 10.

RAM SARAN AND ANOTHER (JUDGMENT-DEBTORS) *v.* PERSIDHAR RAI AND OTHERS (DECREE-HOLDERS).*

Civil Procedure Code, s. 206—Power of lower Court to amend decree affirmed on appeal.

Where a decree for possession of immoveable property, passed by a lower appellate Court, omitted to specify the plots of land to which it related, and was upheld by the High Court by a decree which likewise gave no specification of those plots, and the lower appellate Court subsequently, on the decree-holder's application, amended its decree, under s. 206 of the Civil Procedure Code, by inserting the required specification,—*held* that inasmuch as the effect of the amendment was not to alter the effect of the High Court's decree, or to affect

* Second Appeal, No 448 of 1887, from a decree of G. J. Nicholls, Esq, District Judge of Ghazipur, dated the 4th December, 1886, confirming a decree of Munshi Syad Zain-ul-abdin, Munsif of Korantadih, dated the 18th September, 1886.

(1) See also *Debi Singh* v. *Hanuman Upadhya*, I. L. R., 3 All. 747.

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property other than that actually claimed and decreed, the amendment was not contrary to law. *Shokrat Singh* v. *Bridgman* (1), *Gobardhan Das* v. *Gopal Ram* (2), *Kristo Kishor Roy* v. *Rajah Burrodacaunt Roy* (3), and *Sundara* v. *Subbana* (4) referred to.

The facts of this case were as follows:—Persidhar Rai and others sued Ram Saran and others for possession of certain plots of lands specified in the plaint, and their suit was dismissed by the first Court on the 28th April, 1882; but upon appeal that decree was reversed by the lower appellate Court on the 19th November, 1883, which decreed the claim, but omitted to enter in its decree the numbers and specifications of the plots which formed the subject-matter of the decree. That decree was upheld by the High Court on the 19th March, 1885, and the decree prepared in the High Court also gave no specification of the plots to which the suit related.

An application for execution of decree and recovery of possession of the plots aforesaid was made by the decree-holders on the 9th August, 1885, but it was opposed by the judgment-debtors upon the ground that the only decree capable of execution was the final decree of the High Court, and inasmuch as that decree did not contain a specification of the plots, it could not be executed.

These objections were disallowed by the Court of first instance, which, by its order of the 15th September, 1885, directed that the decree-holders should be placed in possession of the plots to which their suit related. Upon appeal to the lower appellate Court, that Court held that so long as the decree of the High Court remained unamended and silent as to the numbers of the plots in suit, the decree could not be executed, and upon this ground it disallowed execution by its order of the 17th April, 1886. That order was not appealed from, and became final. Thereupon the judgment-debtors applied to the Munsif to regain possession of the land from which they had been ousted under the decree, and they were accordingly restored to such possession on the 9th August, 1886. In the meantime the decree-holders made an application to the lower appellate Court to amend its decree of the 19th November, 1883, by entering therein a specification of the plots

(1) I. L. R., 4 All. 376.
(2) I. L. R., 7 All. 366.
(3) 14 Moo. I. A., 465.
(4) I. L. R., 9 Mad. 354.

which formed the subject-matter of this suit, and their application was granted and the requisite amendment made on the 18th June, 1886. The decree having thus been amended, the present application for execution was made by the decree-holders on the 9th August, 1886, and it was allowed by the Court of first instance, and that order was upheld by the lower appellate Court. The judgment-debtors appealed to the High Court.

Munshi *Sukh Ram*, for the appellants.

Mr. *G. T. Spankie* and Lala *Juala Prasad*, for the respondents.

MAHMOOD, J.—The arguments which Mr. *Sukh Ram* on behalf of the appellants and Mr. *Juala Prasad* on behalf of the respondents have addressed to me raise only two questions for determination:—

(1) Whether, with reference to the order of the 17th April, 1886, the present execution proceedings were barred by the rule of *res judicata* under the ruling of the Privy Council in the case of *Mungal Pershad Dichit* v. *Grija Kant Lahiri* (1) and *Rup Kuari* v. *Ram Kirpal Shukul* (2).

(2) Whether the order made by the lower appellate Court on the 18th June, 1886, amending its decree of the 19th November, 1883, was legal, in view of the circumstance that the decree has been subjected to appeal to this Court, and the final decree in the case was passed by this Court on the 19th March, 1885.

Upon the first of these two points I do not think it is necessary to say anything beyond observing that the two cases relied upon do not apply, because the effect of the Judge's order of the 17th April, 1886 was to hold that the decree, so long as it remained unamended, was not capable of execution and that it needed amendment. The present application is not one in which the same unamended decree is sought to be executed, but it is an application which relates to the execution of the decree after amendment.

The second question, however, is the only real question in the case, and it is a question of law, because the language of s. 206, which enables the Court passing a decree to amend its decree, is silent as to whether such amendment can be made by such Court

(1) I. L. R., 8 Calc. 51; L. R., 8 I. A. 123. (2) I. L. R., 6 All. 269.

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after the decree sought to be amended has already become the subject of an appeal before a higher tribunal. Illustrations of how difficulties may arise in connection with the exercise of the power conferred by that section are to be found in some of the reported cases—in *Raghunath Das* v. *Raj Kumar* (1) and *Surta* v. *Ganga* (2), but this is the first time I have had specifically to deal with the question whether or not the exercise of these powers by a Court passing a decree is legal after the decree has been the subject of an appeal. Mr. *Sukh Ram* argues that under the Full Bench ruling of this Court in *Shohrat Singh* v. *Bridgman* (3) it is the decree of the last Court only which can be executed; and inasmuch as here the decree of the last Court was that of the High Court, dated the 19th March, 1885, and such decree was silent as to the specification of the plots, therefore the amendment of the decree by the lower appellate Court was illegal, because not that decree that could be executed. In dealing it was with this contention, I think it is enough to say that the effect of that Full Bench ruling was explained by Oldfield, J., in *Gobardhan Das* v. *Gopal Ram* (4), in which it was held that in cases where a decree of the last Court only affirms the decree of the lower Court, the Court executing the final decree is at liberty to refer to the lower Court's decree for explanation and information. And this view was consistent with the ruling of the Privy Council in *Kristo Kinkur Roy* v. *Rajah Burrodacaunt Roy* (5).

It is, therefore, clear, in the absence of statutory provision to the contrary, that in a case of this kind, this Court's decree having only upheld the decree of the lower Court, no practical injury can arise in execution, if the lower Court, after the decree had been confirmed by this Court, amended its decree, as was done in this case. There is, indeed, no contention here that the effect of the amendment made by the lower Court is such as to alter the effect of this Court's decree, or to render land other than that which was actually claimed and actually decreed liable to the decree.

Under these circumstances, I think that the amendment of the decree by the lower appellate Court was not opposed to any provision of the law, and that it has caused no injury to the present

(1) I. L. R., 7 All. 276, 876. (3) I. L. R., 4 All. 376.
(2) I. L. R., 7 All. 411, 875. (4) I. L. R., 7 All. 366.
(5) 14 Moo. I. A. 465.

appellant. In this view I am supported by a ruling of the Madras High Court in *Sundara* v. *Subbana* (1), where Collins, C. J., and Muttusami Ayyar, J., concurred in holding that, under s. 206 of the Civil Procedure Code, the Court has power to amend its decree by bringing it into conformity with the judgment after such decree has been confirmed on appeal. This view of the law was accepted by Oldfield and Brodhurst, JJ., in Misc. No. 213 of 1886, *Mohan Lal* v. *Lachmi Prasad* (2), decided on the 22nd December, 1886.

The amendment was, therefore, properly made and has caused no failure of justice.

I dismiss this appeal with costs.

Appeal dismissed.

CRIMINAL REVISIONAL.

1887
September 8.

Before Mr. Justice Mahmood.

QUEEN-EMPRESS *v.* JAGJIWAN AND OTHERS.

Summary trial—Complaint including charge not summarily triable—Summary jurisdiction not necessarily ousted thereby—Criminal Procedure Code, s. 260.

The mere circumstance of a complaint charging an accused person with offences not summarily triable along with other offences so triable would not necessarily oust the summary jurisdiction of a Magistrate under s. 260 of the Criminal Procedure Code. Whether a complaint affords sufficient grounds for a summary trial, or requires a trial according to the ordinary procedure, must be left in a great measure to the discretion of the Magistrate, exercised with due care according to judicial methods with reference to the circumstances of each case. *Ramchunder Chatterjee* v. *Kanhye Laha* (3), *Chunder Seekor Sookul* v. *Dhurm Nath Tewaree* (4), *Beputoolla* v. *Najim Sheikh* (5), and *Empress* v. *Abdool Karim* (6) referred to.

THE facts of this case, which was a reference under s. 438 of the Criminal Procedure Code, are stated in the judgment of Mahmood, J.

MAHMOOD, J.—In this case one Musammat Sheo Kumari, a Hindu widow, whose husband died in 1885, filed a complaint in the Court of the Joint Magistrate on the 25th March, 1887, alleging that certain acts were committed by the accused on the previous day, and that those acts amounted to offences under ss. 322, 448,

(1) I. L. R., 9 Mad. 354.
(2) Not reported.
(3) 25 W. R. Cr. 19.
(4) 1 Calc. L. R. 434.
(5) 2 Calc. L. R., 374.
(6) I. L. R. 4 Calc. 18.