

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Aikman.

1892.
December 19.

TILAK RAJ SINGH AND ANOTHER (DEFENDANTS) v. CHAKARDHARI SINGH
AND ANOTHER (PLAINTIFFS)*

Civil Procedure Code, ss 562, 591—Appeal—Objection to previous order in the case Such objection to be taken in Memorandum of appeal.

Unless such objection is taken in his memorandum of appeal, it is not open to an appellant at the hearing of an appeal from the decree to question the validity of an order of remand previously made in the case under s. 562 of the Code of Civil Procedure.

The plaintiffs sued in the Court of the Munsif of Ballia for the recovery of possession of 3 bighas 13 biswas of land by cancelment of an auction sale dated the 3rd of April 1883, and two settlement decisions dated the 14th of February and the 26th June 1885, and to recover Rs. 87 as damages.

The plaintiffs claimed as purchasers under a sale-deed dated the 4th of September 1880, from one Ram Lal, a tenant at fixed rates. They alleged that they had obtained possession, but that in the recent settlement the defendant, Tilak Raj, had caused his name to be entered in the *khassra* in respect of the land. The plaintiffs had objected to this entry of the defendant's name, but their objection was disallowed. Their application for review of judgment was also disallowed. The plaintiffs then brought a claim in the Civil Court for maintenance of possession, but that claim was dismissed.

The defendant, Tilak Raj, pleaded that he being the sole zamindar of the land in suit and the plaintiffs the representatives, as they alleged, of a cultivator, the suit was not cognizable by a Civil Court. He also pleaded *res judicata*, that Ram Lal was not competent to transfer his tenant rights to the plaintiffs, that the sale-deed of the plaintiffs was collusive, that his own purchase at auction sale was a valid transaction, and lastly that the damages assessed by the plaintiffs were excessive. The second defendant, Raj Kishore, was impleaded as a *pro forma* defendant, having purchased a portion of the land in dispute from Tilak Raj.

* Second Appeal No. 888 of 1890 from a decree of Babu Lalta Prasad, Subordinate Judge of Ghazipur, dated the 10th July 1890, modifying a decree of Munshi Girdhari Lal, Munsif of Ballia, dated the 14th March 1890.

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The first Court after framing five issues and considering them decreed the plaintiffs' claim for possession and for a portion of the damages claimed.

In appeal the Subordinate Judge remanded the case, ostensibly under s. 562 of the Code of Civil Procedure.

The case was accordingly re-tried, by a different Munsif, and in the result the plaintiff's suit was dismissed with costs.

The plaintiffs thereupon appealed and the defendants filed objections under s. 561 of the Code of Civil Procedure. The lower appellate Court allowed the plaintiffs' appeal and gave them a decree for possession and part of the damages claimed.

The defendants thereupon appealed to the High Court, and at the hearing of this appeal, though the point was not taken in the memorandum of appeal, they attempted to plead that the remand order under s. 562 of the Code of Civil Procedure mentioned above was a bad order, and in view apparently of this contention the appeal was referred by the single Judge before whom it had been laid to a Bench of two Judges.

Munshi *Jwala Prasad*, for the appellants.

Mr. *J. E. Howard* and Munshi *Gobind Prasad*, for the respondents.

EDGE, C.J., and AIKMAN, J.—Mr. *Jwala Prasad* for the surviving defendant-appellant has contended that he is entitled in this appeal from the decree of the lower appellate Court to question the order of remand passed under s. 562 of the Code of Civil Procedure, notwithstanding that that objection was not set forth amongst his grounds of objection in the memorandum of appeal here. In our opinion an objection which may be heard under s. 591 of the Code must be one set forth in the memorandum of appeal. Section 591 gives an exceptional privilege to the appellant, apparently on the condition that his objection is an objection set forth as a ground in his memorandum of appeal. Even if we were not prevented from hearing this objection by reason of its not having been set forth in the memorandum of appeal, we would not, having regard to the

fact that the order under s. 562 was made as long ago as the 19th of December 1888, give leave to the appellant to urge that particular objection at this late stage of the case after such a long period has elapsed since the order.

As to the second ground no attempt has been made to support it. The first ground of appeal is not very intelligible. We are told that the holding in question was one to which the second and not the first paragraph of s. 9 of Act No. XII of 1881 applies. The appellants are precluded by the finding of the Court below, which is not questioned in appeal, from contending that the holding was not one at fixed rates.

The appeal of the surviving defendant is dismissed with costs. The appeal so far as it concerns the other appellant, Tilak Raj Singh, who died more than six months ago, and whose representatives have not been brought on the record, abates.

Appeal dismissed.

REVISIONAL CIVIL.

Before Mr. Justice Tyrrell and Mr. Justice Blair.

HASAN SHAH (APPLICANT) v. SHEO PRASAD AND ANOTHER (OPPOSITE PARTIES)*

Civil Procedure Code ss. 206, 209, 622 - Amendment of decree—Interest given by amendment in decree which was not given by the judgment—Revision.

The plaintiffs sued for recovery of a certain sum of money and interest up to date of suit and for interest during the suit and subsequent to decree until satisfaction thereof. The Court in its judgment awarded the plaintiffs a specified sum of money and ordered that the rest of the plaintiff's claim should stand dismissed. Subsequently the Court amended its decree by adding a decretal order for the payment to the plaintiffs by the defendant of interest during the pendency of the suit and after decree until the satisfaction of the debt. *Held* that it was illegal for the Court to decree the claim for interest by way of amendment of its decree and that the order so amending the decree was open to revision.

The facts of this case sufficiently appear from the judgment of the Court.

* Application No. 34 of 1892 under s. 622 of the Civil Procedure Code for revision of an order of Maulvi Shah Ahmad-ullah, Subordinate Judge of Meerut, dated the 23rd April 1892.

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