1884

NAINSUKH RAI v. UMADAI.

Mr. *G. T. Spankie* and Pandit *Ajudhia Nath*, for the appellant.

Pandit *Sundar Lal*, for the respondent.

The Court (OLDFIELD and MAHMOOD, JJ.) delivered the following judgment:—

OLDFIELD, J.—The Subordinate Judge has rejected the award on the mere surmise that the arbitrator was partial, the grounds being that his decision is summary, and he failed to take evidence. An award can only be set aside for corruption or misconduct. But there are no sufficient reasons for assuming corruption or misconduct; and in the absence of any evidence on these points the award cannot be set aside. The defendant, after having agreed to refer to arbitration, and after the order of reference had been made by the Court under s. 508, could not arbitrarily and on no sufficient ground withdraw from her agreement (*Pestonjee Nussurwanjee* v. *Manockjee & Co.*, 12 Moo. I. A. 130). The objection therefore on the defendant's part, that the reference had been revoked, fails. The decree is set aside, and the case will go back to the Subordinate Judge to determine the other objection taken to the award, and if it fails, to decree in accordance with the award: costs to follow the result.

*Appeal allowed.*

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1884
*December* 22.

## CIVIL REVISIONAL.

*Before Mr. Justice Oldfield and Mr. Justice Mahmood.*

RAGHUNATH DAS (PETITIONER) v. RAJ KUMAR (OPPOSITE PARTY) *.

*Civil Procedure Code, ss. 206, 622—Order amending decree—High Court's powers of revision.*

*Per* OLDFIELD, J.—When an original decree is amended under s. 206 of the Civil Procedure Code, it as amended is the decree in the suit; and an appeal therefore lies from it under the provisions of s. 540, when the validity of the amendment can be questioned. The matter of amending a decree under s. 206 does not by itself constitute a "case," within the meaning of s. 622 of the Civil Procedure Code, but forms part of the proceedings in the suit in which the decree is made.

*Held*, therefore, *per* OLDFIELD, J., that, where an original decree, which was appealable, was amended by the Court of first instance, under s. 206 of the Civil

* Application No. 216 of 1884, for revision under s. 622 of the Civil Procedure Code of an order of Maulvi Muhammad Abdul Qaiyum, Subordinate Judge of Bareilly, dated the 6th May, 1884.

1884

RAGHUNATH DAS v. RAJ KUMAR.

Procedure Code, the High Court had no power to revise such amendment under s. 622 of the Code.

*Per* MAHMOOD, J.—An order passed under s. 206 amending a decree is a separate adjudication, and is not merely a part of the original decree, and cannot alter its date, and such an order is not appealable under s. 588 of the Code. Such an order, therefore, can be revised by the High Court, under s. 622.

IN this case a decree in a suit to enforce a right of pre-emption was passed by the Subordinate Judge of Bareilly on the 24th March, 1884, and the order contained in that decree as to costs directed that the pleader's fees should be calculated with reference to the value of the claim as set forth in the plaint. On the 18th April, 1884, the defendant applied to the Court to amend its decree in regard to costs, on the ground that the pleader's fees should be calculated with reference to the actual value of the property to which the suit related. On the 6th May, 1884, the Court passed an order as follows:—"In pre-emption cases fees should be calculated upon the actual value of the property, and not upon any other value. In preparing this decree, the value of the property was not regarded, and fees were computed on the amount of the claim. The decree should be corrected, and it is therefore ordered that the original decree be amended, and after the copy thereof has been amended, it may be returned to the applicant."

The defendant applied for revision of this order to the High Court. It was contended that the pleader's fees had been wrongly computed with reference to the actual value of the property, and that the amendment of the decree by the lower Court was not an amendment of the kind authorized by s. 206 of the Civil Procedure Code.

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), for the petitioner.

Munshi *Sukh Ram*, for the opposite party.

The Court (OLDFIELD and MAHMOOD, JJ.) delivered the following judgments:—

OLDFIELD, J.—We have no power of revision, under s. 622 of the Civil Procedure Code, in a case in which an appeal lies to the High Court. We are asked here to revise an order made under s. 206 for amending a decree. Now the decree as amended is the decree in the suit, and therefore an appeal lies from it under the

1884

RAGHUNATH DAS v. RAJ KUMAR.

provisions of s. 540, when the validity of the amendment can be questioned. An appeal, therefore, in the language of s. 622 lies in this case to the High Court, and s. 622 has no application.

It cannot be said that the matter of amending a decree under s. 206 by itself constitutes a "case" within the meaning of s. 622; it seems to me to form part of the proceedings in the suit in which the decree is made, and those proceedings together form a case in which an appeal lies.

I would therefore dismiss this application with costs.

MAHMOOD, J.—I regret that I am unable to agree with my brother Oldfield upon the questions of law which this case involves. The facts which it is necessary to mention are that, on the 24th March, 1884, the Subordinate Judge of Bareilly passed a decree in a suit for pre-emption, and subsequently, on the 18th April, 1884, the respondent applied to the Court to amend its decree, on the ground that it was defective in not awarding costs in the manner required by the law in this part of the country. The Subordinate Judge took up the case under s. 206 of the Civil Procedure Code, and professing to act under the authority given by the last paragraph of that section, passed an order on the 6th May, 1884, which is the subject of the present application on the Revisional Side.

The power which the Court possesses of amending its decree was first created, at all events in the present extensive form, by the Civil Procedure Code of 1877, and it remained unaltered by the Code of 1882. But for this provision the Court of first instance could not, after passing its decree, interfere *suo motu* with the order contained therein in regard to costs, mesne profits, or any other matter connected with the suit. I have therefore no doubt that from the moment when the decree was passed, the Court became *functus officio*. Now it is necessary to examine carefully the terms of s. 206, which are as follow:—"The decree must agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, as stated in the register, and shall specify clearly the relief granted or other determination of the suit." The second paragraph imperatively requires the Court to frame its decree so as to

"state the amount of costs incurred in the suit, and by what parties and in what proportions such costs are to be paid." In the case before us, the words of the last paragraph are specially important:—"If the decree is found to be at variance with the judgment, or if any clerical or arithmetical error be found in the decree, the Court shall, of its own motion, or on that of any of the parties, amend the decree so as to bring it into conformity with the judgment, or to correct such error: provided that reasonable notice has been given to the parties or their pleaders of the proposed amendment." Now in this paragraph there are three important points. The first is, that the powers referred to may be exercised by the Court of its own motion; secondly, they may also be exercised by the Court at the instance of either party; thirdly, they cannot be exercised unless reasonable notice has been given to the parties. I understand the section to mean that when the Court or the parties to a suit consider that the decree is at variance with the judgment, the Court can only amend the decree after issuing such notice as may enable either party to prefer objections. The section would not have imperatively required the issuing of notice, if this proceeding under the section were not in the nature of an adjudication, separate from the decree sought to be amended.

A considerable part of the argument addressed to us by the learned pleader for the opposite party (respondent) related to the question whether s. 206 of the Code should not be regarded as merely ministerial, and whether a decree amended under the section must not be taken for the purposes of appeal, &c., as dating from the time when the amendment was made. I am of opinion that the contention has no force. In the first place it is specifically provided by the immediately preceding s. 205, that a decree shall date from the day on which the judgment was pronounced, and after it is duly signed it becomes, and must be regarded as a decree of that date. There is nothing in s. 206 to modify this imperative rule. Further, in s. 2 of the Code, a "decree" is defined as "the formal expression of an adjudication upon any right claimed, or defence set up, in a Civil Court, when such adjudication, *so far as regards the Court expressing it, decides the suit or appeal.*" Now I lay particular stress

1884

RAGHUNATH DAS v. RAJ KUMAR.

upon the last words which I have just read; and it appears to me that there is no force in the contention raised on behalf of the opposite party that the decree of the 24th March, 1884, did not decide the case, so as to make the Court *functus officio*. Once a judgment is pronounced and the decree prepared and signed within the meaning of s. 205 of the Civil Procedure Code, it becomes a final decree, which might form the subject either of an appeal or a review of judgment. It could not be interfered with, altered or amended by the Court which passed the decree, if the last paragraph of s. 206 did not confer the especial power of amendment to be exercised only after hearing the parties. I am therefore of opinion that the order passed under s. 206 was a separate adjudication, and not merely a part of the original decree, and could not alter its date. Then we have been referred to the case of *Gaya Prasad* v. *Sikri Prasad* (1), in which it was held that "an application to amend a decree which is found to be at variance with the judgment, in accordance with the provisions of s. 206 of the Civil Procedure Code, is an application of the kind mentioned in No. 178 of sch. ii of Act XV of 1877, and, as such, subject to the limitation of three years." And at the hearing it was said that this ruling made it impossible for the Court to amend its decree after three years. I do not agree with this. The Limitation Act relates to the action of parties, but not to the action of the Court. If the Court should be of opinion that by reason of any clerical or arithmetical error, its decree does not carry the judgment into complete effect, it may take up the decree and amend it even after three years or more. Under the provisions of the law as to revision, a decree cannot be revised if an appeal from it is possible. By s. 206, as I understand it, the Court has power to amend its decree, even if an appeal would lie therefrom, to this Court or to their Lordships of the Privy Council, and the time for the appeal had expired.

If we were to hold that this order of the 6th May, 1884, was not a separate adjudication, we should be deciding in effect that after several years had passed, and after the time provided for an appeal had long come to an end, the Court might take up its decree and so amend it as to seriously affect the rights of the parties whom it

(1) I. L. R., 4 All., 23.

1884

RAGHUNATH DAS v. RAJ KUMAR.

concerned. Now we know that the only grounds recognized in s. 206 as justifying the Court in amending the decree are variance of the decree with the judgment, or clerical or arithmetical errors. But what happened in the present case was that the original decree, conformably with Rule 59 of the collected Rules of the High Court, awarded costs computed on the value of the amount claimed. The rule is as follows:—"The words, 'the amount or value of the claim' in Rules 55, 56, and 58, mean the value as set forth in the plaint, application, or memorandum of appeal, and where court-fees are payable *ad valorem*, according to which such court-fees are paid." The effect of this is that the costs in a suit like the present must be calculated in the same manner as court-fees upon a valuation of the claim. In the present case, therefore, the decree ordered costs in the manner prescribed, and that order has been interfered with, not on account of a clerical or arithmetical error, but because the Court believed that it was competent to pass an order which is inconsistent with the Rules which this Court has framed.

I am, therefore, satisfied that the order passed under s. 206 is a separate adjudication; that it is not appealable under s. 588; and that a Court which goes beyond what is warranted by the last paragraph of s. 206 may practically be altering the nature of the decree. If such a course were allowed, any Judge, who (as sometimes happens) took an erroneous view of his own judgment, might say: "I meant so and so by my judgment upon this point and upon that," and thus might make alterations going far beyond merely clerical or arithmetical corrections. The present petitioner could not appeal against the decree of the 24th March, 1884, for it would be contrary to his interest to do so. His only grievance is the order of 6th May, 1884, which wrongly amended the decree, and his only way to remove that grievance is by revision. The power of revision under s. 622 of the Civil Procedure Code belongs to the High Court only, and it was intended to be exercised in correction only of such errors as were not open to appeal, and within certain specified limits. Then it is argued that an order amending a decree under s. 206 of the Civil Procedure Code, whether such order is right or wrong, is not a "*case*" within the meaning of s. 622 of the Code, and is therefore not subject to revision.

1884

RAGHUNATH DAS v. RAJ KUMAR.

What I have already said fully meets this contention, and I may add that as a matter of practice the case of *Gaya Prasad*, to which I have already referred, shows that a Division Bench of this Court has taken cognizance of such orders in revision, although it dismissed the application upon grounds which do not apply to this case. Here the order as to costs complained of by the petitioner is admittedly erroneous and could be rectified only by revision. The order as to costs, as it stood originally in the decree of 24th March, 1884, was correct, and the order of amendment passed on the 6th May, 1884, was not justified by the provisions of s. 206 of the Civil Procedure Code, and was therefore *ultra vires*. I would set aside that order, and allow the application with costs to the petitioner.

## APPELLATE CIVIL.

1885
*January* 15.

*Before Mr. Justice Oldfield and Mr. Justice Mahmood.*

NANDA RAI AND ANOTHER (DECREE-HOLDERS) *v.* RAGHUNANDAN SINGH (JUDGMENT-DEBTOR). *

*Execution of decree—Application by two of three joint decree-holders for part execution of joint decree—Limitation—Act XV of 1877 (Limitation Act), sch. ii, No. 179—Acquiescence by judgment-debtor in part execution.*

A decree for money was passed in 1871, in favour of two persons jointly. In 1883, the decree-holders applied for execution thereof. By previous applications for execution made in 1875, 1877, and 1880, the decree-holders had sought to recover two-thirds of the amount of the decree.

*Held* that inasmuch as the previous executions of the decree by some sharers for their shares, whether strictly allowable or not, were allowed, and no objections at the time were taken to them, they were good for the purpose of keeping the decree alive, and that the judgment debtor could not now take exception to them as not being applications to enforce the decree within the meaning of the Limitation Act. *Mungul Pershad Dichit* v. *Grija Kant Lahiri* (1) followed.

The decree of which execution was sought in this case, which was for money, and dated the 19th July, 1871, was passed in favour of Gopal Rai and Jeo Rai jointly. They sold it to three persons, named Sheodat Rai, Umar Rai, and Jageshar Rai. On the 29th November, 1873, these three persons applied for its execution. On the 5th February, 1874, the rights and interests of Sheodat Rai and Umar Rai in the decree were put up for sale in execution of a

* Second Appeal No. 64 of 1884, from an order of H. D. Willock, Esq., District Judge of Azamgarh, dated the 1st March, 1884, affirming an order of Maulvi Amin-ud-din, Munsif of Muhammadabad Gohna, dated the 22nd December, 1883.

(1) I. L. R., 8 Calc. 51 ; L. R., 8 Ind. Ap. 123.