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CHAJMAL DAS  
v.  
BRIJ BHUKAN  
LAL.

event exceed the sum of Rs. 16,000 claimed by the plaintiff. The defendants should pay to the plaintiff his costs incurred in the Court of the Subordinate Judge in proportion to the amount recovered by him. There should be no costs of the appeal to the High Court. The respondents must pay the costs of this appeal. Their Lordships will humbly advise Her Majesty accordingly.

*Appeal allowed.*

Solicitors for the appellant:

Messrs. *Hamlin, Grammer & Hamlin.*

## APPELLATE CIVIL.

1895

April 17.

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Banerji.*

JAFAR HUSAIN (DEFENDANT) v. RANJIT SINGH (PLAINTIFF).\*

*Civil Procedure Code, s. 561—Appeal—Objections—Withdrawal of appeal—Failure of objections.*

If an appeal in which objections have been filed under s. 561 of the Code of Civil Procedure is withdrawn, the objections cannot be heard. *Bahadoor Singh v. Bhugwan Dass* (1); *Ram Pershad Ojha v. Bharosa Kunwar* (2); *Shama Churn Ghose v. Radha Kristo Chaktanwis* (3); *Coomar Puresh Narain Roy v. Messrs. R. Watson & Co.*, (4); *Subhai Doyalji v. Raghunathji Vasanji* (5); *Dhondi Jagannath v. The Collector of Salt Revenue and the Secretary of State for India in Council* (6) and *Maktab Beg v. Hasan Ali* (7) referred to.

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

Pandit *Sundar Lal* for the appellant.

The Hon'ble Mr. *Colvin*, Mr. *D. N. Banerji* and Babu *Rajendro Nath Mukerji* for the respondent.

EDGE, C. J., and BANERJI, J.—Pandit *Sundar Lal*, for the appellant, has withdrawn this appeal. It had been, as a matter of fact, called on, but it had not been argued or opened when Pandit *Sundar*

\* First Appeal No. 319 of 1893, from a decree of Munshi Kamta Prasad, Assistant Collector, 1st class, of Bijnor, dated the 12th September 1893.

(1) N.-W. P. H. C. Rep., 1896, 28.

(2) 9 W. R., 328.

(3) 14 W. R., 210.

(4) 23 W. R., 229.

(5) 10 Bom. H. C. Rep., 397.

(6) I. L. R., 9 Bom., 28.

(7) I. L. R., 8 All., 551.

*Lal* elected to withdraw. The appeal is accordingly withdrawn. The respondent to the appeal had filed objections under s. 561 of the Code of Civil Procedure. Mr. *D. N. Banerji* asked to be heard in support of those objections. Pandit *Sundar Lal* objected that, the appeal having been withdrawn, there was no hearing of the appeal upon which the respondent was entitled to take any objection to the decree of the Court below. So far as this appeal is concerned, there is no essential difference between s. 348 of Act No. VIII of 1859 and s. 561 of the present Code of Civil Procedure. Section 16 of the Court Fees Act, 1870, also points to the objections being argued at the hearing of the appeal. There is a long list of authorities in favour of the contention raised by Pandit *Sundar Lal*: those which may be mentioned are:—*Bahadoor Singh v. Bhugwan Dass* (1); *Ram Pershad Ojha v. Bharosa Kunwar* (2); *Shama Charn Ghose v. Radha Kristo Chaklanuwis* (3); *Coomar Puresh Narain Roy v. Messrs. R. Watson and Co.* (4); *Dubhai Dayalji v. Ragunathji Vasanji* (5); *Dhondi Jagannath v. The Collector of Salt Revenue and the Secretary of State for India* (6) and *Maktab Beg v. Hasan Ali* (7). Although a hardship arises in the case of a respondent who has taken advantage of the provisions of the Code of Civil Procedure, and filed objections to the decree under appeal, instead of filing a separate appeal, when the appeal is withdrawn, so as to deprive the respondent of his opportunity of supporting his objections, still we are bound to follow the long series of authorities, and hold that the respondent in this case cannot be heard in support of his objections. Many of the decisions, to which we have referred, were long anterior to the passing of Act No. XIV of 1882, and ever since that Act was passed, amendments to the Act have been made by the Legislature; and the Legislature must be presumed to have known the course of decisions to which we have referred, and to have decided that the respondent who takes advantage of the Code of Civil Procedure to object to the decree under appeal by way of objection, and not by way of appeal, shall run the risk of having his objections

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(1) N.-W. P. H. C. Rep., 1866, p. 23.

(2) 9 W. R., 328.

(3) 14 W. R., 210.

(4) 23 W. R., 229.

(5) 10 Bom. H. C. Rep., 397.

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defeated and his right of appeal barred by the effect of the Limitation Act, 1877, and be left without any remedy against a decree which might be open to question. For the above reasons we are unable to hear the objections filed by the respondent, and hold that they have fallen with the withdrawal of the appeal.

Under s. 220 of the Code of Civil Procedure, we make an order directing the appellant, Syed Jafar Husain, to pay the taxed costs of this appeal to the respondent, Chaudhri Ranjit Singh.

1895  
April 17.

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Banerji.*

MAHABIR SINGH AND ANOTHER (PLAINTIFFS) v. SAIRA BIBI AND ANOTHER  
(DEFENDANTS).\*

*Act No. IV of 1882 (Transfer of Property Act), s. 99—Usufructuary mortgage—  
Suit by mortgagee for sale of equity of redemption of mortgaged property in  
execution of a decree for mesne profits and costs.*

Certain usufructuary mortgagees not having been put in possession of the mortgaged property by the mortgagor sued and obtained a decree for possession with mesne profits and costs. Under this decree the mortgagees were put in possession of the mortgaged property. They then applied for attachment and sale of the mortgaged property in execution of their decree for mesne profits and costs. This application was disallowed. The mortgagees then brought a suit for sale of the equity of redemption of the mortgaged property reserving their rights and interests under the mortgage. *Held*, that such a suit would not lie as being opposed to the intention of s. 99 of the Transfer of Property Act, 1882. *Azim-ullah v. Najm-un-nissa* (1) and *Jadub Lall Shaw Chowdhry v. Madhub Lall Shaw Chowdhry* (2) referred to.

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

Mr. *Abdul Raooof* for the appellants.

Munshi *Ram Prasad* and Babu *Durga Charan Banerji* for the respondents.

EDGE, C. J., and BANERJI, J.—The plaintiffs in the suit in which this appeal has arisen were usufructuary mortgagees under

\* First Appeal No. 106 of 1892, from an order of Munshi Lalta Prasad, Additional Subordinate Judge of Gházipur, dated the 25th February 1892.

(1) I. L. R., 16 All., 415.

(2) I. L. R., 21 Calc., 34.