

and they will humbly advise Her Majesty to affirm the decree of the District Court, omitting from it the exception from the costs of Defendant No. 2 (the appellant) of the costs of the witnesses Gregory and Apear, and Baba Kumar Guka and Norendro Nath Sen, which should not have been disallowed, and to reverse the decree of the High Court and order the appeal to it to be dismissed with costs. The respondent will pay the costs of this appeal.

1896

A. B. MILLER,
OFFICIAL
ASSIGNEE
OF THE
ESTATE OF
RAMKISHEN
DAS
v.
BABU MADHO
DAS.

Appeal allowed.

Solicitors for the appellant, Messrs. *Lattey and Hart.*

Solicitor for the respondent, Mr. *T. C. Summerhays.*

MUHAMMAD IKRAM-UD-DIN (DEFENDANT) AND MUSAMMAT NAJIBAN
(PLAINTIFF).

P. C.
1896.

July 26th.

On petition relating to an appeal from a decree of the High Court at Allahabad.
*Special leave to appeal—Decrees of the High Court made on cross-appeals—
Procedure.*

The High Court passed a separate decree, on a cross-appeal, identical in terms with those of a decree passed on the appeal in the same suit. From the latter decree an appeal to Her Majesty in Council was then declared by the High Court to be admitted, under section 603, Civil Procedure. But the defendant's application to have his appeal from the decree on the cross-appeal similarly admitted was refused.

The Judicial Committee was of opinion that special leave should be granted to appeal from this decree, without further security being required than had already been taken in respect of the appeal in the other.

Petition for special leave to appeal from a decree (27th June 1891) varying a decree (23rd January 1889) of the Subordinate Judge of Bareilly.

In this suit was contested the proprietary right in a share in zamindári villages and other immovables situate in the Bareilly district. The property had been inherited by Imami, now deceased, alleged by the defendant, now petitioner, to have been his wife. The co-plaintiffs averred that they were the whole sisters of the deceased, and entitled to their shares, under Muhammadan

*Present:—*LORDS WATSON, HOBHOUSE, MACNAGHTEN, and DAVEY, and
SIR R. COUCH.

1896

MUHAMMAD
IKRAM-UD-
DIN
v.
MUSAMMAT
NAJIBAN.

law, in her property. The defendant Ikram-ud-din alleged that the plaintiffs were half-sisters only to his late wife, who had conveyed to him two of the villages in suit, Jabira and Pachtaur. The plaintiffs had, however, made it part of their case that the defendant's marriage was invalid, and that the conveyance by his alleged wife to him was inoperative.

On the 23rd January 1889 the Subordinate Judge gave judgment in favour of the two sisters. He excepted the two villages, as to which he dismissed their claim. From his decree of that date the defendant appealed, and the plaintiffs cross-appealed to the High Court. The appeal was numbered 64, and the cross-appeal 74. On the cross-appeals the contention was, by the defendant, that the plaintiffs were half-sisters to Imami, and not entitled to the shares given by the first court in her estate; the plaintiffs contending that the defendant had failed to prove his marriage, and that the conveyance of the two villages to him was ineffectual.

The High Court on the 27th June 1891 varied the decree. The difference between the judgments was that the first court gave four-sevenths of the disputed estate to the plaintiffs, and the appellate court one-half. The High Court found the plaintiffs to be half-sisters to the deceased Imami, and, finding that the defendant had been validly married to Imami, held him entitled to the other half of the estate of the deceased Imami. That estate the High Court found to include the two villages above-mentioned, which, in the Court's opinion, had not passed to the defendant by Imami's conveyance.

The decrees of the High Court, both in No. 64 and in No. 74, were in the same terms, with only the necessary variations. The defendant presented two petitions of appeal for admission of these two decrees to appeal, under sections 598—600, Civil Procedure; and an appeal in No. 74 was admitted. As to No. 64, the petition was refused. The High Court transmitted the record of all the proceedings relating to No. 74, but omitted all papers exclusively connected with appeal No. 64, including the certified copy of the memorandum of appeal in the latter; and the proceedings relating

to the appeal, from the decree of the High Court in No. 64, to Her Majesty in Council were also not sent.

The present petition was for special leave to appeal from the last mentioned decree, and for an order that certified copies of the necessary papers be transmitted.

Mr. *H. Cowell*, in support of the petition, argued that the application for special leave to appeal from decree No. 64 should be granted. The Code of Civil Procedure did not, in the chapters relating to appeals or to original decrees, authorize more than one decree being made finally disposing of the suit between cross-appellants, and to the same effect. The two decrees made in this suit should have been one, as they were mere duplicates, the one of the other. They were in effect one. One of them could not be modified without the other being in like manner varied, for there could not be two conflicting decrees in one suit, each of them final. The petitioner should have special leave to appeal from the decree in appeal No. 64, without being required to file other security beyond what he had already filed. In any event, the record should be completed.

Mr. *G. E. A. Ross*, for the plaintiff-respondent, did not object to the leave being granted, provided that the papers asked for, and to be transmitted, were those already on the file of the High Court.

Their Lordships were of opinion that they should recommend the granting of leave applied for, without the petitioner having to file any further security than had already been taken. The record should be completed.

Solicitors for the petitioner, Messrs. *Banken, Ford, Ford and Chester*.

Solicitors for the respondent, Messrs. *Pyke and Parrott*,

1896

MUHAMMAD
IKRAM-UD-
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v.
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