

amount decreed by us not being paid on or before the date above mentioned, the mortgaged property, or a sufficient part thereof, be sold. We dismiss the remainder of Kishan Lal's claim, and totally dismiss the claim of the other plaintiffs with costs. The appellant will recover from Kishan Lal his costs here and in the Court below proportionately to the amount of his success.

Decree modified.

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PHUL
CHAND
v.
CHHOTU LAL.

REVISIONAL CIVIL.

1898
March 5.

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

LAKHO BIBI (DEFENDANT) v. SALAMAT ALI (PLAINTIFF).*

Civil Procedure Code, section 206—Application to bring decree into accordance with the judgment—Decree erroneous but in accordance with judgment—Decree not susceptible of alteration.

Where a decree is in accordance with the judgment on which it is based, such decree, however erroneous it may be, cannot be altered on an application under section 206 of the Code of Civil Procedure to bring the decree into accordance with the judgment.

THE facts of this case are fully stated in the judgment of the Court.

Pandit *Datti Lal* and Babu *Baidiya Nath Das*, for the appellant.

Maulvi *Ghulam Mujtaba*, for the opposite party.

EDGE, C. J. and BURKITT, J.:—This is an application in revision under section 622 of the Code of Civil Procedure. It arises out of an order made by the Subordinate Judge of Allahabad on an application presented under section 206 of the Code. The facts are these. The respondent here, Syed Salamat Ali, was the holder of a second mortgage of mauza Sondhia. The appellant here, Musammat Lakho Bibi, was the holder of a third mortgage over mauzas Sondhia, Khaura and Gaura. Her mortgage money had been applied to the discharge of the first mortgage in which the three mauzas had been mortgaged. Salamat Ali brought a suit under section 88 of the Transfer of Property

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Act for sale of mauza Sondhia in discharge of his mortgage. That was the only relief which he asked. Musammat Lakho Bibi had pleaded her third mortgage and the discharge of the first mortgage as a shield to protect mauza Sondhia being brought to sale until the money paid by her to discharge the first mortgage had been repaid to her. The Subordinate Judge found that Lakho Bibi was entitled to avail herself of the discharge of the first mortgage as a shield, and in his judgment he held that Salamat Ali was bound to pay Lakho Bibi Rs. 2,050, being the amount paid to discharge the first mortgage, and he also held that Salamat Ali having made that payment, if Lakho Bibi did not redeem him, Salamat Ali was entitled to his decree for sale. The decree as drawn up was, in our opinion, in accordance with the judgment. It decreed that Salamat Ali should pay Rs. 2,050 to Lakho Bibi, that in default of redemption by Lakho Bibi at a specified time mauza Sondhia should be sold. Here we may observe that in our opinion the judgment and decree were incorrect. On the finding that Lakho Bibi was entitled to avail herself of the discharge of the first mortgage as a shield in this suit, the Subordinate Judge ought to have ascertained what proportionate part of the Rs. 2,050 should be attributed to the discharge of the first mortgage on mauza Sondhia as far as it was concerned, and he should have given the plaintiff, of course subject to redemption by Lakho Bibi, a decree for sale of mauza Sondhia on payment of that proportionate amount to Lakho Bibi. No party appealed; but after the decree had been drawn up and signed Salamat Ali applied under section 206 of the Code to have the decree amended by making it a decree for sale of not only mauza Sondhia, but also of mauzas Khaura and Gaura. The Subordinate Judge granted that application and altered the decree in accordance with it. It is with reference to that order that this application for revision has been made. Now the decree as first made was, in our opinion, strictly in accordance with the judgment. The judgment was incorrect in the particulars to which we have referred, but still the decree was a decree in

accordance with the judgment, whether that judgment was right or wrong in law. The decree as altered on the application under section 206 is not a decree in accordance with the judgment. The judgment did not decide that mauzas Khaura and Gaura should be sold: Salamat Ali had not asked in his plaint that they should be sold. In law he was not entitled to a decree for sale of those mauzas. He was not a mortgagee of those mauzas, and did not become a mortgagee of those mauzas by payment of the amount paid by Musamat Lakho Bibi in discharge of the first mortgage. If the result has been that he has paid more than he ought to have been compelled to pay in order to obtain the sale of mauza Sondhia, that result could have been avoided; it was due to his own laches in not appealing. He has brought that result upon himself. The law cannot be altered to relieve a man from the effect of his own laches. The application under section 206 of the Code of Civil Procedure should have been dismissed and not granted. Under section 622 of the Code we make the following order. We allow this application with costs. We set aside the order passed on the application under section 206 of the Code with costs. We dismiss that application, and we restore the decree as originally drawn up and signed.

Application allowed.

REVISIONAL CRIMINAL,

1898

March 12.

Before Mr. Justice Burkitt.

QUEEN-EMPRESS v. AJUDHIA AND ANOTHER.*

Criminal Procedure Code, section 437—Order for further inquiry—Order to the prejudice of an accused person—Notice to show cause.

Before any order is made to the prejudice of an accused person, notice should be given to that person to appear and show cause why the order should not be passed. *Queen-Empress v. Chotu* (1) referred to.

In this case the applicants Ajudhia and Punni had been charged before the Cantonment Magistrate of Allahabad with

* Criminal Revisional No. 83 of 1898.

(1) I. L. R., 9 All., 52.