

1908
May 1.

Before Mr. Justice Blair and Mr. Justice Banerji.
RAMJI DAS (PLAINTIFF) v. AJUDHIA PRASAD AND OTHERS
(DEFENDANTS).*

Civil Procedure Code, section 561—Appeal—Procedure by way of objections not open to a party who has in fact appealed from the decree of the Court below.

Held that objections under section 561 of the Code of Civil Procedure can only be filed by a party who might have appealed from the decree of the Court below, but has not done so. It is not open to a party who has appealed, and whose appeal has been dismissed, subsequently to such dismissal, to prefer objections under section 561 to the decree of the Court below.

THE plaintiff in this case sued the defendants for compensation for damage caused by the defendants to the plaintiff's house. The Court of first instance (Subordinate Judge of Saharanpur) decreed the claim in part. The defendants appealed against part of the decision of the Court of first instance, and the plaintiff also appealed against that part of the decree which refused him a portion of the relief claimed. The plaintiff's appeal came on first for hearing, and was dismissed by a decree in the following terms:—"It is decreed and ordered that the decree of the lower Court, dated the 12th of September 1899, be upheld and the appeal dismissed." Immediately upon the dismissal of that appeal, the plaintiff filed objections in the defendants' appeal setting up the very grounds upon which in his own appeal he had asked for relief and been refused. The Court below declined to entertain these objections, and the plaintiff thereupon appealed to the High Court on the ground that the Court below was wrong in refusing to consider the objections raised by him under section 561 of the Code of Civil Procedure.

Mr. W. Wallach, Pandit Moti Lal Nehru and Babu Durga Charan Banerji, for the appellant.

Messrs. W. K. Porter and R. Malcomson, for the respondents.

BLAIR and BANERJI, JJ.—In this appeal, which is also a plaintiff's appeal in the suit out of which the appeal last dealt with arose, the plaintiff objects under section 561 of the Code of Civil Procedure. The Court of first instance had decreed the plaintiff's claim in part. The defendants appealed against

* Second Appeal No. 384 of 1901, from a decree of Rai Shankar Lal, Additional Judge of Saharanpur, dated the 24th of December 1900, modifying a decree of Babu Prag Das, Subordinate Judge of Saharanpur, dated the 12th of September 1899.

that part of the decision of the Court of first instance. The plaintiff also entered an appeal against that part of the decision which refused him the relief he had asked for. The plaintiff's appeal came on first for hearing. That appeal was dismissed and the decree was couched in the following language :—" It is decreed and ordered that the decree of the lower Court, dated the 12th of September, 1899, be upheld and the appeal dismissed." Immediately upon the dismissal of that appeal the plaintiff filed objections in the defendants' appeal, setting up the very grounds upon which in his own appeal he had asked for relief and been refused. The Court below declined to entertain these objections under section 561 of the Code of Civil Procedure. Mr. Wallach disputes the rightfulness of that decision. He asks us to interpret section 561 as a section conferring the right upon a respondent to set up objections to the decree whether he has appealed or not. Unquestionably the wording of that section is unfortunate; but considering its whole scope it seems to us a reasonable construction to put on it that the Legislature meant to give the right of taking objections under section 561, only in those cases in which the party proposing to file them might have appealed, and did not. Upon thus reading of the section it was not open to the plaintiff to maintain objections under section 561 of the Code of Civil Procedure. Further, the decree of the lower appellate Court dismissing the plaintiff's appeal, and upholding the decree of the Court of first instance, in our opinion, precluded the plaintiff from agitating again the questions which had been raised in the appeal. This appeal therefore fails, and is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Blair and Mr. Justice Banerji.

HABIB-UN-NISSA AND OTHERS (PLAINTIFFS) v. MUNAWAR-UN-NISSA AND OTHERS (DEFENDANTS).*

IN THE MATTER OF THE PETITION OF ASHIQ HUSAIN KHAN (RESPONDENT).
Civil Procedure Code, section 595—Appeal to His Majesty in Council—Appeal
from an order of section 592 of the Code of Civil Procedure.

Held that an order under section 562 is not ordinarily capable of being the subject of an appeal to His Majesty in Council, though it may possibly

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v.
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