

1901  
December 14.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.*  
BALDEO SINGH (PLAINTIFF) v. DHARAM KUNWAR AND OTHERS (DEFENDANTS). IN THE MATTER OF THE APPLICATION OF BALWANT SINGH.\*  
*Practico—Civil Procedure Code, section 204—Form of decree—Findings on issues not essential to the determination of a suit or appeal not to form part of the decree.*

*Held* that although it is advisable that in appealable cases a Court should record its findings upon important issues in a suit or appeal other than the issue or issues upon the determination of which the decree is based, the findings on such issue or issues ought not to form part of the Court's decree. *Tarakant Bannerjee v. Puddomoney Dossee* (1) and *Kovan v. Crawford* (2) referred to.

THIS was an application by way of objections under section 561 of the Code of Civil Procedure asking the Court to amend the decree of the lower Court, an appeal from which had been dismissed, by striking out of it the findings arrived at by that Court upon certain issues other than the issue upon the determination of which the decree was in fact based, and the decision of which was not essential for the determination of the suit.

The facts of the case are sufficiently stated in the order of the Court.

Babu *Durga Churan Banerji*, for the appellant.

Babu *Jogindro Nath Chaudhri*, for Dharam Kunwar, Dr. *Satish Chandru Banerji* and Babu *Lalit Mohan Banerji*, for the objector (Balwant Singh).

STANLEY, C. J., and BURKITT, J.—After we had pronounced judgment in First Appeal No. 239 of 1901, in which, affirming the decree of the lower Court, we dismissed the appeal, an application was made to us by the learned vakil for the respondent, Balwant Singh, under the following circumstances. When the learned Subordinate Judge delivered the judgment in the case mentioned above, he gave his decree in these words:—"It is ordered and decreed that the plaintiff's claim be dismissed with costs." Subsequently, on an application made by Rani Dharam Kunwar, the learned Subordinate Judge directed that his findings on three issues should be added to the decree. The finding on the first issue is the finding on

\* First Appeal No. 239 of 1901, from a decree of Babu Prag-Das, Subordinate Judge of Saharanpur, dated the 30th May, 1901.

(1) (1866) 5, W. R., P. C., 63. (2) (1877) L. R., 6 Ch. D., 29; at pp. 41 and 42.

which the plaintiff's suit is dismissed, and which formed the subject-matter of the appeal to this Court. The findings on the second and third issues are to the effect that it has not been proved that Rani Dharam Kunwar had authority from her husband to make the adoption, but as a matter of fact had adopted Balwant Singh. The application to us is that the findings on the second and third issues should be struck out of the decree. The learned *vakil* contended that inasmuch as it was held that the plaintiff had no *locus standi* to contest the adoption, said to have been made by the Rani, of Balwant Singh, it was unnecessary for the Subordinate Judge to have tried any other issue, and that his findings on any other issue were mere *obiter dicta* which should not have been added in the decree. This application is resisted on behalf of the co-defendant, Rani Dharam Kunwar, and we were very frankly informed by the learned advocate who appeared for her that her object in desiring to have these additions made to the original decree was that they might be used by her as *res judicatæ* in future litigation between herself and Balwant Singh. In our opinion the application to strike the second and third of these findings out of the decree must be allowed. No doubt their lordships of the Privy Council in the case of *Tarakant Banerjee v. Puddomoney Dossee* (1) do say that in such a case it is advisable that the Court in appealable cases as far as may be practicable should pronounce its opinion on all important points, that is to say on important points the decision of which was not necessary for the final decision of the suit. The object of their Lordships' remarks no doubt is that the necessity of remanding a case to the lower Court may not arise in case the appellate Court should take a different view from the Court of first instance on the issue decided by the latter Court. The appellate Court would then take up and consider the reasons given for its findings on other issues by the lower Court. Here nothing of the kind was required. This Court fully and entirely concurred in the decision of the Court of first instance that the plaintiff had failed to show any *locus standi* in the case, and therefore dismissed the appeal. Any observations or findings of the Court of the learned Subordinate

1903

---

 BALDEO  
 SINGH  
 v.  
 DHARAM  
 KUNWAR.

1903

BALDEO  
SINGH  
v.  
DHARAM  
KUNWAR

Judge on other grounds are, as he himself points out, mere *obiter dicta* which cannot be treated as *res judicatae*. In this connection we would refer to the remarks of Sir George Jessel, in the case of *Kewan v. Crawford* (1). Section 204 of the Code of Civil Procedure is also in point. For the above reasons we direct that the findings upon the two issues numbered 2 and 3 by the learned Subordinate Judge be struck out of the decree. The costs incurred by Balwant Singh in this matter must be borne by Rani Dharam Kunwar.

*Appeal dismissed.*

1903

December 17.

*Before Mr. Justice Blair and Mr. Justice Banerji.*

JAI GOPAL MUKERJI (PLAINTIFF). v. LALIT MOHAN (DEFENDANT).  
*Act No. I of 1877 (Specific Relief Act), sections 9 and 39—Suit on basis of former possession apart from title—Concurrent suit for cancellation of deed of gift under which defendant claimed—Cause of action.*

Where a plaintiff filed a suit for recovery of possession of immovable property under section 9 of the Specific Relief Act, 1877, and while such suit was pending filed a second suit asking for cancellation of a deed of gift under which the defendant claimed title, it was *held* that this was not a splitting up of a cause of action and that the second suit was unobjectionable in point of law.

THE facts of this case are as follows :—

The plaintiff brought a suit against the defendant under section 9 of the Specific Relief Act, 1877. In that suit he alleged that he had been in possession of the property claimed and that the defendant had ousted him otherwise than in due course of law, and he claimed a decree for possession on the basis merely of his former possession in fact without raising any question of title. While this suit was pending the plaintiff brought the suit out of which this appeal arises against the same defendant under section 39 of the Specific Relief Act. In the present suit the plaintiff claimed a decree for cancellation of a certain deed of gift under which the defendant was claiming title to the property in suit in the former case.

The Court of first instance (Munsif of Muttra) held that the suit was bad for splitting up cases of action, and dismissed

\* Second Appeal No. 666 of 1902, from a decree of H. D. Griffin, Esq., Judge of Agra, dated the 30th June, 1902, confirming the decree of Munshi Maharaj Singh, Munsif of Muttra, District Agra, dated the 1st May, 1902.

(1) (1877) L. R., 6 Ch. D., 29; at pp. 41 and 42.