

1905  
November 8.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir  
William Burkitt.*

KANHAIYA LAL AND OTHERS (DEFENDANTS) v. BALDEO PRASAD  
(PLAINTIFF).\*

*Civil Procedure Code, section 623—Review of judgment—Effect of order  
on review—Appeal from original decree.*

Where an application for review of judgment is granted, the result is a new decree superseding the original decree, and not merely some amendment thereof. An appeal was filed pending an application for review of judgment in the Court below; the review was granted, and an order passed which purported merely to amend the decree then under appeal. *Hold* that the order for review superseded the original decree; the decree under appeal had ceased to exist and the appeal could not be heard. *Kaur Sen v. Ganga Ram* (1) followed.

THIS was an appeal from a decree passed on the 16th of December, 1902, by the Subordinate Judge of Bareilly. On the 13th of February, 1903, the decree-holder made an application for review of judgment. On the 18th of April the defendants appealed against the decree of the 16th of December, 1902, to the High Court. On the 29th of August, 1903, the lower Court passed orders on the plaintiff's application for review and modified the decree in important particulars. It did not, however, purport to pass a fresh decree, but merely to amend the former decree. At the hearing of the appeal a preliminary objection was taken that the effect of an order in review is to supersede entirely the decree under review, and consequently there was now no decree under appeal.

Babu *Jogindro Nath Chaudhri*, for the appellants.

Mr. *W. K. Porter*, for the respondent.

STANLEY, C.J. and BURKITT, J.—A preliminary objection has been raised to the hearing of this appeal on the ground that the decree appealed against is non-existent. The decree against which the appeal is preferred is dated the 16th of December, 1902. An application for review of judgment was made on the 13th February, 1903, and on the 29th of August, 1903, the application for review of judgment was heard and the decree was modified in important particulars and a new decree passed.

\* First Appeal No. 78 of 1903 from a decree of Babu Prag Das, Subordinate Judge of Bareilly, dated 16th of December, 1902.

(1) Weekly Notes, 1890, p. 144.

By this decree the old decree of the 16th of December, 1902, was entirely superseded. The present appeal was preferred on the 18th of April, 1903, pending the disposal of the application for review. It is admitted that the application for review and the order passed thereon could not be treated as having been made under section 206, inasmuch as it was not an application to bring the decree into conformity with the judgment or to amend a clerical error. Consequently the order passed on review amounted to a new decree, superseding, as we have said, the old decree. Under these circumstances the decree against which the present appeal has been preferred does not exist, and the appeal cannot be heard. The same question came before a bench of this Court in the case of *Kuar Sen v. Ganga Ram* (1). Edge, C.J. and Young, J., there decided that a preliminary objection similar to the one now raised was fatal to the hearing of the appeal. We dismiss the appeal. Under the circumstances we say nothing as to costs.

1905

KANHAIYA  
LAL  
v.  
BALDEO  
PRASAD.

*Appeal dismissed.*

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkill.*

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November 8.

MADAN MOHAN LAL (PLAINTIFF) v. AKBARYAR KHAN AND OTHERS  
(DEFENDANTS).\*

*Hindu law—Hindu widow—Effect of decree against widow in possession—  
Reversioners.*

A reversioner succeeding to an estate after the death of the widow of the former owner will be bound by a decree obtained against the widow, provided that there has been a fair trial of the suit in which such decree was passed. *Katama Natchiar v. The Rajah of Shivayunga* (2), and *Hari Nath Chatterjee v. Motiur Moham Goswami* (3) followed.

THE plaintiff in this case sued as next reversioner to recover certain zamindari property which had been of one Mindhai Lal in his life-time. Mindhai Lal, according to the plaintiff, died in January 1881, and after his death the property in suit was taken possession of by his widow, Dayali Kunwar, who died on the 6th of July, 1891. The suit was filed on the 4th of July,

\* First Appeal No. 300 of 1903 from a decree of Babu Prag Das, Subordinate Judge of Bareilly, dated the 31st of August, 1903.

(1) Weekly Notes, 1890, p. 144. (2) (1863) 9 Moo. I. A., 543.  
(3) (1893) I. L. R., 21 Cal., 8.