

Before Mr. Justice Richards and Mr. Justice Griffin.

KISHAN KUNWAR (PLAINTIFF) v. GANGA PRASAD (DEFENDANT).*

1908
December 16.

Civil Procedure Code, (1882), section 202—Procedure—Court not competent to alter judgment after delivery.

Where a District Judge wrote and delivered a judgment in a civil appeal, but suspended the issue of his decree pending the production by the plaintiff of a certificate of succession, it was held that it was not competent to the Judge to cancel the judgment already delivered and to pronounce a second judgment inconsistent therewith.

THE facts out of which this appeal arose are as follows :—

The defendant No. 1 executed a mortgage in favour of Mahkhan Lal, husband of the plaintiff, on 18th January 1901. Mahkhan Lal died leaving plaintiff as sole heir and representative. She brought this suit for sale on foot of the mortgage of the 18th of January 1901. The defendant No. 2 held a prior usufructuary mortgage as well as a subsequent mortgage over the same property. He pleaded that two sisters of the mortgagor were also owners of the mortgaged property and were necessary parties to the suit and that the plaintiff, being a mortgagee of the interest of defendant No. 1 alone, could not redeem his mortgage and bring the property to sale. In the court of first instance, the defendant No. 2 prayed for an adjournment, which was refused and the plaintiff's suit was decreed. On appeal to the District Judge, he, on the 20th May 1908, delivered a judgment holding that there was no cause shown for an adjournment, and also deciding the other points against the defendant No. 2, but adding :—“ I defer passing a decree in this appeal for two months in order to give plaintiff an opportunity of producing a succession certificate.” On the 25th May 1908, however, the District Judge passed an order remanding the case to the court of first instance on the ground that as the defendant No. 2's prayer for an adjournment had not been granted, he had not had a sufficient opportunity of presenting his case. The plaintiff appealed.

The Hon'ble Pandit *Sundar Lal*, for the appellant, contended that the court below had no jurisdiction to go behind the judgment recorded by it on the 20th May 1908. Section 202 of the Code of Civil Procedure forbade the alteration of a judgment.

* First Appeal No. 88 of 1908, from an order of H. J. Bell, District Judge of Aligarh, dated the 25th of May 1908.

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The Judge had simply deferred passing the decree, until a succession certificate was produced. He had no power to re-open the matter and deliver an altogether fresh judgment.

Dr. *Satish Chandra Banerji* (with him *Babu Benoy K. Mukerji*), for the respondent, submitted that the case was not finally disposed of on the 20th May 1908. It was still on the list of pending cases. No decree was framed on the basis of the writing dated the 20th May 1908. It was therefore not a 'judgment' within the meaning of the definition in section 2 of the Code.

The only judgment in the case was that dated the 25th May 1908. So long as a case was pending in a court, the court had seisin of it, and if it found that an opinion expressed by it at a former stage was erroneous, it could give effect to its reconsidered opinion when disposing of the case finally. Here the Judge himself stated that all the facts were not fully present before his mind on May 20th.

After an appellate court has expressed an opinion and remitted issues to the lower court, which records findings on those issues, the appellate court can re-open the case and decide it without reference to those findings. He referred to *Lachman Prasad v. Jamna Prasad* (1) and *Amir Kazim v. Zainab Begam* (2).

RICHARDS and GRIFFIN, JJ.—This was a suit on foot of a mortgage. The plaintiff's mortgage was dated the 18th of January 1901. Defendant No. 1 was the executant of the mortgage. Defendant No. 2 held a prior mortgage from the same mortgagor. He also held a second mortgage from the same mortgagor and also alleged that he held a third mortgage from him. The court of first instance decreed the suit. Defendant No. 2 alone appealed. His grounds of appeal to the lower appellate court were that he had not had sufficient opportunity to present his case, and that he had applied to the court of first instance to adjourn the case, which that court refused to do. The matter having come up for trial to the lower appellate court, judgment was delivered on the 20th of May 1908. The court in the clearest possible way decided that defendant No. 2 had had sufficient opportunity in the court below. The judgment goes into the entire facts of the case. It deals with all

(1) (1887) I. L. R., 10 All., 162. (2) Weekly Notes, 1897, p. 152.

the objections of defendant No. 2. It was, however, necessary for the plaintiff before a decree could be passed in her favour that she should produce a certificate to collect debts as the heir of the original mortgagee. The concluding words of the judgment are—"following the course adopted by the High Court in *Abdul Karim Khan v. Maqbul-un-nissa* (1), I defer passing decree in this appeal for two months in order to give the plaintiff an opportunity of producing the certificate." This judgment is duly signed and dated, and it is impossible to read it without seeing that the Judge intended it to be a complete judgment. He merely deferred passing the decree for production of a certificate to collect debts. He did not even adjourn the case. Five days afterwards the court delivered a second judgment and made an order remanding the case to the court of first instance.

This judgment is inconsistent with the first judgment. According to the first judgment nothing remained to be done except to pass a decree. According to the second judgment the learned District Judge was to pass no decree at all but remanded the case to the court of first instance. Section 202 of the Code of Civil Procedure provides that as soon as a judgment is dated and signed by the Judge in open court it must not be altered or added to, save to correct verbal error or to supply some accidental defect not affecting a material part of the case, or on review. In view of these provisions of the Code, we think that the order of the Court below was illegal. We accordingly allow the appeal, set aside the order of the court below, and remand the case, directing the learned District Judge to deal with the case in accordance with his judgment of the 20th May 1908. The appellant will have his costs.

Appeal decreed.

(1) (1908 I. L. R., 30 All., 815.

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