portion of the compromise was accidentally omitted from the decree, it was open to the judgement-debtor to have the decree amended. *If he intentionally omitted any portion of the compromise from* the decree he has himself to blame. In any case he is not entitled to go behind the decree which finally decided the rights of the parties. This is a point which, as we have already pointed out, was not taken in the court below. If the appellant deems himself aggrieved in any way, we must leave him to his remedy by a separate suit. We think the decision of the court below is perfectly correct. We dismiss the appeal with costs.

Appeal dismissed.

1913

MOHAN LAL v. JAGAN NATH.

Before Mr. Justice Sir Harry Griffin and Mr. Justice Chamier.

1913

February, 15.

GANESHI LAL AND OTHERS (PLAINTIFFS) *v.* CHARAN SINGH AND OTHERS (DEFENDANTS)*

Mortgage—Parties—Suit for entire mortgage money and sale of entire mortgaged property—Omission to implead certain persons interested—Decree to which plaintiffs entitled.

Where a plaintiff mortgagee sued for the recovery of the whole of the mortgage money by the sale of the whole of the mortgaged property, but by an oversight omitted to implead certain persons who had acquired a share in the property subsequent to the mortgage in suit, it was *held*, that so much of the claim should be decreed as was proportionate to the interests of the persons who were before the court.

THIS was a suit on a mortgage made in favour of the first plaintiff in January, 1891. Some of the defendants were the mortgagors and remainder were impleaded on the ground that they had acquired an interest in the mortgaged property by purchase. One of the defences to the suit was that the plaintiffs had failed to implead four persons who had acquired one-sixth of the mortgaged property after the mortgage. The first court gave the plaintiffs a decree for $\frac{5}{6}$ths of the amount due on the mortgage, to be recovered, if necessary, by sale of $\frac{5}{6}$ths of the property mortgaged. The defendant appealed. The District Judge held that the non-joinder of owners of one-sixth of the property was fatal to the suit, which he accordingly dismissed.

The plaintiffs appealed to the High Court.

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* Second Appeal No. 454 of 1912 from a decree of H. M. Smith, Additional Judge of Agra, dated the 29th of November, 1911, reversing a decree of Kalika Singh, Additional Subordinate Judge of Agra, dated the 27th of June, 1911.

1913

GANESHI LAL v. CHARAN SINGH.

Dr. *Satish Chandra Banerji* and Babu *Jogindro Nath Chaudhri*, for the appellants.

Mr. *M. L. Agarwala* and Munshi *Benode Behari*, for the respondents.

GRIFFIN and CHAMIER, JJ.:—This was a suit on a mortgage made in favour of the first plaintiff in January, 1891. Some of the defendants were the mortgagors and the remainder were impleaded on the ground that they had acquired interest in the mortgaged property by purchase. One of the defences to the suit was that the plaintiffs had failed to implead four persons who had acquired one-sixth of the mortgaged property after the mortgage. The first court gave the plaintiffs a decree for $\frac{5}{6}$ths of the amount due on the mortgage, to be recovered, if necessary, by sale of $\frac{5}{6}$ths of the property mortgaged. The defendant appealed. The District Judge held that the non-joinder of the owners of one-sixth of the property was fatal to the suit, which he accordingly dismissed. In second appeal it is contended that the decision of the lower appellate court was erroneous. Reliance is placed on the decision in *Imam Ali* v. *Baij Nath Ram Sahu* (1) and some observations made by one of us in *Gendan Lal* v. *Babu Ram* (2). For the defendants respondents it is contended that a mortgagee must sue for recovery of the whole of the mortgage money by sale of the whole of the mortgaged property, and that if for any reason he is unable to ask for the sale of the whole mortgaged property his suit should be dismissed. In the present case the plaintiffs sued for recovery of the whole of mortgage money by sale of the whole of the mortgaged property. But by an oversight they omitted to implead certain persons who owned a share in the property distinct from the shares held by the other defendants. It seems to us that if the other questions in the case are decided in favour of the plaintiffs, so much of the claim should be decreed as is proportionate to the interest of the persons who are before the court. There seems to be some question as to whether the defendants are the owners of $\frac{5}{6}$th or a smaller share. This matter may be determined by the lower appellate court. We allow the appeal, set aside the decree of the lower appeallate court, and remand the case to that court to be restored to the

(1) (1906) I. L. R., 33 Calc., 613. (2) (1911) 9 A. L. J., 86.

pending file and disposed of according to law. Costs will be costs in the cause.

Appeal allowed and cause remanded.

1913

GANESHI LAL v. CHARAN SINGH.

1913

February, 18.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

JAI DEI (APPLICANT) v. BANWARI LAL, (OPPOSITE PARTY)*

Act No. VII of 1889 *(Succession Certificate Act), section* 9—*Certificate in favour of Hindu widow to realize interest only*—*Certificate* ultra vires.

Held that, where a certificate was granted to a Hindu widow for collection of debts due to her late husband, it was not competent to the Court, in lieu of requiring security from the grantee, to give a certificate for realization of interest only without disturbing capital. *Shib Dei* v *Ajudhia Prasad* (1) referred to.

IN this case one Musammat Jai Dei, a Hindu widow, applied under section 6 of the Succession Certificate Act, 1889, for a certificate in respect of four debts due to her late husand. The application was opposed by certain reversioners, who asked the court to take security from the widow, as there was every likelihood of her wasting the corpus of the property if it reached her hands. On that the Judge passed the following order:—"The certificate asked for is granted, with the condition that the applicant may not disturb the capital sum and shall draw interest only." Musammat Jai Dei appealed to the High Court, urging that the order in question was *ultra vires* the condition imposed being one which it was not in the power of the court to annex to the grant of a certificate.

Dr. *Surendra Nath Sen*, for the appellant.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the respondents.

TUDBALL and MUHAMMAD RAFIQ, JJ:—The appellant Musammat Jai Dei applied under section 6 of Act VII of 1889, the Succession Certificate Act, in respect of four debts due to her deceased husband. The application was opposed by certain reversioners, who asked the court to take security from the widow, as there was every likelihood of her wasting the corpus of the property if it reached her hands. On that the District Judge passed the following order:—"The certificate asked for is granted with the condition that the applicant may not disturb the capital sum and shall draw interest

* First Appeal No. 148 of 1912 from an order of T. L. Johnston, District Judge of Farrukhabad, dated the 1st of August, 1912.

(1) F. A. f. O., No. 108 of 1910, decided on the 13th of February, 1911.