

REVISIONAL CIVIL.

Before Mr. Justice Dalal.

SATTAR AND OTHERS (DEFENDANTS) *v.* NAZIR KHAN
(PLAINTIFF) AND ASIR AND OTHERS (DEFENDANTS).*

1928
May, 16.

Civil Procedure Code, sections 151 and 152—Execution of decree—Correction of accidental slip in judgement and decree—Abuse of the process of the court.

In a suit for partition of immovable property a certain portion of the property involved, belonging to one set of defendants, was decreed to the plaintiff and the portion belonging to another set of defendants was exempted, and the amin of the court was ordered to draw up a map showing what portion of the property had been decreed to the plaintiff. The map, however, showed as having been decreed to the plaintiff the portion which belonged to the exempted defendants, and in consequence of this the plaintiff obtained possession of the property which had not been decreed to him. The exempted defendants applied for correction of the record, which was refused on the ground that the decree was not at variance with the judgement.

In revision the High Court ordered a fresh and correct map to be prepared, and returned the case to the lower court with directions that the revised map should be substituted for that existing on the record.

THE facts of this case sufficiently appear from the judgement of the Court.

Mr. B. Malik, for the applicant.

Mr. Zahur Ahmad, Mr. A. M. Khwaja and Maulvi Majid Ali, for the opposite parties.

DALAL, J. :—A final judgement for the preparation of a final decree was passed in this suit on the 26th of November, 1924. According to the judgement, and also

1928

SATTAR
v.
NAZIR
KHAN,

according to the decree, certain defendants, who are applicants here, were exempted, and the decree was passed only against defendants Nos. 1 to 10, 13, 27, 28, 29 and 30. The plaintiff was decreed possession against these defendants only, and his suit against the other defendants was dismissed. It is not necessary to dwell on the reasons for the dismissal. To find out over what property the plaintiff should be given possession the court ordered the Amin on the 8th of November, 1924, to prepare a plan of the portion of the house over which the plaintiff was to receive possession. The Amin prepared a plan containing the property in possession of the defendants applicants who were specially exempted from the operation of the decree. Parties and pleaders were negligent as usual, and no one discovered the mistake. Negligence went so far that when the plaintiff Nazir Khan applied some years later for the correction of the decree when he discovered that wrong property was decreed to him, the defendants applicants themselves objected, suspecting a pit was dug somehow for them to fall into. When Nazir Khan executed the decree, and the defendants applicants found that it was over their property that Nazir Khan had obtained possession, they came rushing to court to get the decree amended. The learned Judge of the court denied jurisdiction under sections 151 and 152 of the Code of Civil Procedure, saying that the matter did not relate to correction of a decree. It is true so far that the judgement will also have to be corrected. Section 152, however, applies both to judgements and decrees. The court is given power to correct the errors arising from any accidental slip or omission. In my opinion there was a clear accidental slip in including in the judgement somebody else's property instead of the property of the defendants against whom the decree was passed. The map will have to be revised, but there is no reason why that

should not be done by the court in the present proceedings. Section 151 declares, what was always law, that a court can make any such order that may be necessary to prevent abuse of the process of the court. A more glaring case of the abuse of the process of the court cannot be imagined than the one here, where the process of the court was employed in doing something which the court never intended to do. The decree has already been executed, and possibly in these proceedings the defendants applicants may not be able to obtain restoration of possession. At the same time, so long as the judgment and decree stand, the defendants applicants could not sue for the possession of property wrongly obtained by the plaintiff from them by process of law. I direct that the matter be re-opened and the map mentioned in the court's order of the 26th of November, 1924, in the order-sheet be corrected. I am told that defendants Nos. 1 to 10, 13, 27, 28, 29 and 30 are already parties to these proceedings. In that case the trial court will be able to proceed to the correction of the map so as to bring it in accord with the intention of the court. When the map is corrected, that map shall be substituted for the map existing on the decree at present.

As it was due to the stupidity of the defendants applicants that this litigation arose and the plaintiff had behaved quite honestly in trying to get the decree amended, I direct that costs here of the plaintiff shall be paid by the defendants applicants. The order of the trial court dated the 6th of August, 1927, is hereby set aside and that court is directed to proceed according to the instructions given above.

Application allowed.

1928

SATTAR
v.
NAZIR
KHAN.