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devolved upon them. This would be the result even if the plaintiff had inadvertently omitted to implead the daughter. In the present suit, the plaintiff's claim is further weakened by the fact that he has expressly exonerated the daughter from liability. It is inequitable that he should, by exonerating one of the heirs, impose a greater liability upon the remaining heirs.

We do not see that the definition of "legal representative" which was introduced into the Code of Civil Procedure of the year 1908 has altered the rule of law which has been enunciated in the decisions cited. No authority has been shown for the view that the law on this point has been altered.

In our opinion the trial court has correctly decided that the plaintiff, after exempting the daughter from the array of defendants, is only entitled to a decree against the two remaining defendants for sums proportionate to the shares of Zahur Ahmad's estate which devolved upon them.

We accordingly dismiss the application with costs.

Before Mr Justice King and Mr. Justice Thom.

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April, 19.

AZIZ ULLAH KHAN AND OTHERS (APPLICANTS) *v.* COLLECTOR OF SHAHJAHANPUR (OPPOSITE PARTY).*

Civil Procedure Code, sections 151, 152, 153—*Amendment of accidental error—Misdescription of mortgaged property in mortgage deed, plaint, decree, sale certificate and* dakhalnama—*Whether such mistake of parties can be amended—Inherent powers—Evidence Act (I of* 1872), *section* 95.

Property in village Nawadiya Zamania Nagla was mortgaged, but by an accidental slip the name of the village was wrongly given in the mortgage deed as Nagla Zamania Nawadiya. In the suit for sale brought on the mortgage the same mistake crept into the plaint, the decree, the sale certificate and *dakhalnama*. The mistake came to light when the auction purchaser, who was the mortgagee himself, applied in the revenue court for mutation of names and his application was refused on the ground that according to the

*Civil Revision No. 379 of 1931.

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sale certificate he had not purchased the property in Nawadiya Zamania Nagla. He then applied for amendment of the decree and connected proceedings, under section 152 of the Civil Procedure Code. It was admitted that there was no village bearing the name which was wrongly entered, and there was never any doubt as to the identity of the mortgaged property. The Judge satisfied himself, by taking evidence, that there was in fact a misdescription of the property, and granted the application. *Held*, on revision,—

The language of section 152 of the Civil Procedure Code is wide enough to cover the correction of mistakes made by the parties themselves as well as mistakes made by the court or by its ministerial officers. Further, the section is not restricted to mistakes which had an origin not anterior to the filing of the suit.

Although section 152 can only apply in terms to the amendment of decrees and not to the amendment of the plaint, sale certificate and *dakhalnama*, the power of the court to make corrections is not confined to section 152. Extensive powers may be exercised also under sections 151 and 153. The present case was eminently a case in which the court should exercise its inherent power and correct the accidental slip, as the correction was necessary for the ends of justice.

Under section 95 of the Evidence Act the Judge had jurisdiction to call evidence for the purpose of showing that the mortgage deed did, in fact, relate to the property in Nawadiya Zamania Nagla.

Mr. *Krishna Murari Lal*, for the applicants.

Mr. *U. S. Bajpai*, for the opposite party.

KING and THOM, JJ. :—This is an application in revision against an order passed by the District Judge to the effect that a mortgage decree and certain connected documents be amended.

The applicant before us mortgaged certain zamindari property in a village called "Nawadiya Zamania Nagla", but by an accidental slip the property was described in the mortgage deed as being situated in the village "Nagla Zamania Nawadiya". The words are the same, but the order has been inverted by an accidental slip. It is admitted that there is no village bearing the latter name or at least, that there is no

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village of that name in which the mortgagor has or ever had any interest. There was never any doubt as to the identity of the mortgaged property.

The mortgagee brought a suit upon the basis of the mortgage, obtained a preliminary decree, which was upheld by the appellate court, obtained a final decree and brought the property to sale. The mortgagee himself purchased the property at the auction sale, obtained a sale certificate and obtained formal delivery of possession. Throughout all these proceedings the property was described erroneously as being situated in "Nagla Zamania Nawadiya" in accordance with the wording of the mortgage deed. It was not until the mortgagee, as auction purchaser, applied to the revenue court to have his name mutated as purchaser of the share that the mistake came to light. The revenue court refused the application for mutation on the ground that the auction purchaser, according to the sale certificate, had not purchased the property in Nawadiya Zamania Nagla.

The mortgagee then applied to the trial Judge asking him under section 152 to amend the decree. The Subordinate Judge rejected the application on the ground that his decree had become merged in that of the District Judge and he had no jurisdiction to amend the decree. The mortgagee then applied to the District Judge for amendment of the decree and the connected proceedings, but the District Judge also held that he had no jurisdiction to decide the application as the applicant should have appealed from the order of the Subordinate Judge. The mortgagee then went up to the High Court in revision. A Bench of this Court decided that the District Judge had jurisdiction to hear and decide the application and returned the application to him for disposal. The District Judge having taken evidence to satisfy himself that there was, in fact, a misdescription of the property, granted the application for amendment.

It has been argued before us, firstly, that the court below purports to take action under section 152 of the Code of Civil Procedure and that that section applies only to mistakes made by the court or by its ministerial officers and not to mistakes made by the parties to the suit. The language of that section is, in our opinion, wide enough to cover the correction of mistakes made by the parties themselves. The applicant has relied upon a decision of this Court in *Ram Chandar Sarup* v. *Mazhar Hussain* (1). In the judgment of that case their Lordships remarked: "Section 152 deals with amendments of clerical errors in orders or decrees of the court itself which are drawn up not properly representing what the court decides." In our opinion this decision can be distinguished upon the facts. The correction which the applicant in that case desired was not the correction of a mere misdescription of property but a very substantial amendment. The applicant had, as a creditor, filed a claim for Rs. 3,418 against the insolvent and had supported his claim by an affidavit. His claim was allowed to that extent. About two years later he applied to the insolvency court stating that the real amount of his debt was about Rs. 6,000 and by mistake he had stated that it was only Rs. 3,418. The insolvency court decided that there had been no mistake and that the debt should remain entered in the schedule at the amount claimed by the applicant himself. Subsequently the applicant made a second application for correction to the same court. The insolvency court rejected the application, and it was held in revision by a Bench of this Court that section 152 did not apply so as to enable the insolvency court, in the circumstances of that case, to make the amendment desired. The amendment in that case was, as we have already noted, of a very different nature from the amendment now in question. It was a very substantial and important amendment which

(1) (1919) 51 Indian Cases, 55.

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would involve taking further evidence to ascertain the correct amount of the debt. This ruling, moreover, cannot be taken as a clear authority for the proposition that the court is unable to correct a mistake made by the parties themselves. In an earlier portion of the judgment the court observed: "No doubt the insolvency court has the same jurisdiction that the ordinary courts of law possess under the Code of Civil Procedure to correct any mistake either of a clerk or *of the parties themselves* upon a question of fact, when a mistake is established." This ruling therefore is no clear authority against the action taken by the court below in making the amendment.

Another ruling, *Balaprasad* v. *Kanoo* (1), has been cited to support the applicant's contention. In that case a certain field was mortgaged and in the mortgage deed the field was described by a wrong number. The error was not noticed by the parties throughout the proceedings in the subsequent mortgage suit and a decree was given for sale of the mortgaged property described by the wrong number. When the error was discovered in the course of the execution proceedings the decree-holder instituted a suit for amendment of the decree. It was held by a single Judge of the Judicial Commissioner's court of Nagpur that the suit was maintainable. Incidentally the question was discussed whether the plaintiff had a remedy under section 152 of the Code of Civil Procedure. The learned Judge expressed a very hesitating opinion on that point: "I am inclined to think that section 152 applies to mistakes which had an origin not anterior to the filing of the suit." With due deference to the learned Judge we see no reason why the plain and literal meaning of the words should be restricted in the manner suggested.

For the opposite party we have been referred to a ruling of this Court in *Sheo Balak Pathak* v. *Sukhdei* (2), in which the Court ordered the amendment of the proceedings starting from the plaint right down to the decree.

(1) (1911) 14 Indian Cases, 407. (2) (1914) 12 A.L.J., 185.

We have also been referred to an unreported decision of a Bench of this Court (of which one of us was a member) in *Sarju Kumar Mukerji* v. *Sheikh Enayat Husain* (1). The facts of that case were very similar to the facts of the case before us and the Court ordered the correction of the documents in question, namely the plaint, the decree and other documents. We see no reason why these decisions of this Court should not be followed, as they are in accordance with the ordinary meaning of the language in section 152.

It has been further argued that the court below purports to act under section 152 of the Code of Civil Procedure only and that that section can only apply in terms to the amendment of the decrees and not to the amendment of the plaint, sale certificate and *dakhalnama*. This contention, no doubt, is correct, but the power of the court to make corrections necessary for the ends of justice is not confined only to powers exercisable under section 152. Extensive powers may be exercised also under sections 151 and 153. We consider that this is eminently a case in which the accidental slip should be corrected, as the correction is necessary for the ends of justice.

A further objection raised on behalf of the applicant is that the District Judge had no jurisdiction to amend the final decree which was passed by the Subordinate Judge and was not appealed against. In answer to this, we think it is enough to say that it has been decided between the parties by the order of the High Court that the District Judge had jurisdiction to dispose of this application upon the merits and this point cannot be raised at this stage.

The learned advocate for the applicant has also submitted that the District Judge had no jurisdiction to call for evidence to satisfy himself whether there had, in fact, been a misdescription of the property in the mortgage deed. In our opinion, this contention has no force, as under section 95 of the Evidence Act the court had

(1) Civil Revision No. 148 of 1929, decided on the 11th of July, 1930.

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jurisdiction to call evidence for the purpose of showing that the mortgage deed did, in fact, relate to the property in Nawadiya Zamania Nagla.

This is a clear case of an accidental slip in the description of property. The misdescription was not even noticed by the parties throughout the whole course of the proceedings in the mortgage suit. There was never any doubt as to the identity of the property. In the circumstances we think this is clearly a case in which the court should exercise its inherent power of making such corrections as are necessary for the ends of justice. It would be a blot upon the judicial administration if the courts were powerless to do justice in a case of this sort, where corrections are necessary in order to give effect to the intentions of the parties themselves and to the true meaning of the mortgage decrees.

We dismiss the application with costs.

APPELLATE CIVIL.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Iqbal Ahmad.

1932 *April*, 20.

QASIM HUSAIN BEG (DEFENDANT) *v.* KANIZ SAKINA (PLAINTIFF).*

Muhammadan law—Dower—Relinquishment by wife who is a minor—Majority Act (IX of 1875), section 2—Divorce —Khula—Option of revocation and claim to dower after khula—Limitation—Period of iddat.

The settlement of dower or its relinquishment comes within the exception contained in section 2 of the Indian Majority Act. The agreement about the payment of a certain amount of dower is a part of the contract of marriage and a person who is a minor under the Indian Majority Act, but a major under the Muhammadan law, is capable of relinquishing the dower as consideration for obtaining *khula*, which is a form of divorce recognized by the Muhammadan law and comes within the exception mentioned above.

*Second Appeal No. 1049 of 1929, from a decree of J. Allsop, District Judge of Aligarh, dated the 16th of March, 1929, modifying a decree of Sirajuddin, Munsif of Koil, dated the 20th of November, 1928.