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district would also be a court subordinate to the Chief Court.

For the reasons given above I am of opinion that the Court of the District Judge of Fyzabad, in the circumstances of the present case, is not subordinate to the Chief Court, and I would answer the reference accordingly.

BY THE COURT :—The question is answered in the negative. (Hon'ble WAZIR HASAN, J. dissenting.)

FULL BENCH.

Before Sir Louis Stuart, Knight, Chief Judge, Mr. Justice Wazir Hasan and Mr. Justice Muhammad Raza.

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April, 3.

SAIYED MUHAMMAD RAZA (DEFENDANT-APPLICANT) v. RAM SAROOP AND OTHERS (PLAINTIFF OPPOSITE-PARTY.)*

Civil Procedure Code (Act V of 1908), sections 151, 152 and 153—Compromise decree in a suit—Appeal or review not filed again the decree—Application by a party that person verifying or admitting compromise on his behalf had no authority to do so after the limitation for appeal and review had expired—Court's power to entertain the application—Inherent power of court to amend its judgment and decree.

It is open to a party to a suit to appeal from a decree passed in the suit on the basis of a compromise purporting to be on his behalf on the ground that the person verifying or admitting the compromise had no authority to enter into it on his behalf.

Further it is open to a party in a suit to invoke the inherent power of the court to get the judgment and the decree amended under the provisions of sections 151, 152 and 153 of the Code of Civil Procedure quite apart from the limitation applicable to the institution of an appeal or a review. He

*Section 115, Application No. 61 of 1928, against the order of Bhudar Chandra Ghosh, Subordinate Judge of Bahraich, dated the 10th of November, 1928, dismissing the application of the applicant.

has a right to apply, but it is for the court to decide whether he has made out a case justifying interference. *Khiarajmal* v. *Daim* (1), and *Sheodarshan Singh* v. *Matadin Singh* (2), referred to.

THE case was originally heard by a Bench of two Judges who referred certain questions of law to a Full Bench for decision. Their order of reference is as follows :—

MISRA and RAZA, JJ. ;—This is an application in revision under section 115 of the Code of Civil Procedure against an order of the Subordinate Judge of Bahraich, dated the 10th of November, 1928, dismissing an application made by the applicant (Muhammad Raza) under sections 151 and 152 of the Code of Civil Procedure.

One Badri Prasad, father of Ram Swarup and others (opposite party), brought a suit against Saiyid Ali Haider, Muhammad Raza and others on the basis of a mortgage-deed, dated the 23rd of October, 1918, Muhammad Raza was defendant No. 4 in that suit.

The claim was resisted by the defendants including the defendant No. 4 (Muhammad Raza). The defendant No. 2 was discharged and his name was struck off the plaint.

The court recorded some proceedings on different dates and then two compromises were filed on the 28th of January, 1927. One compromise was filed by the plaintiff and the defendant No. 5. The other compromise purports to be a compromise between the plaintiff and the defendants Nos. 3 and 4. This is the compromise which we have to consider in this case. A decree for sale of the mortgaged property was eventually passed in terms of the compromises against the defendants Nos. 3 to 5 and *ex parte* against the defendant No. 6 and against the defendant No. 1 on his admission on the 31st of January, 1927. Though the compromises were

(1) (1904) L. R., 32 I. A., 23. (2) (1924) 1 O. W. N., 160.

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filed on the 28th of January, 1927, but the decree was passed on the 31st of January, 1927. There is nothing on the record to show why the suit was not disposed of on the 28th of January, 1927, the date on which the compromises were filed. The decree which was passed on the 31st of January, 1927, was a preliminary decree.

Misra and Raza, JJ.

Ram Swarup and others (sons of Badri Prasad since deceased) applied for a final decree under Order XXXIV, rule 5, schedule I, of the Code of Civil Procedure on the 17th of March, 1928. This application was opposed by Muhammad Raza (defendant No. 4) on the ground that he was no party to the compromise, dated the 28th of January, 1927, and that his name had been wrongly entered in the preliminary decree and should not be entered in the final decree. He contended that the decree, dated the 31st of January, 1927, was not anyhow binding on him and asked the court to take action under sections 151 and 152 of the Code of Civil Procedure.

The learned Subordinate Judge dismissed the defendant No. 4's application on the ground that it was not maintainable under sections 151 and 152 of the Code of Civil Procedure. He did not dispose of the application on the merits. The result was that the final decree was passed on the 10th of November, 1928.

Muhammad Raza has now applied for revision challenging the order of the learned Subordinate Judge dated the 10th of November, 1928.

We have examined the record and find that Muhammad Raza defendant No. 4 was not really a party to the compromise in question. His name was, of course, noted in the petition of compromise, but the fact is that the compromise was not signed either by him or his pleader or agent on his behalf. Saiyed Zaigham Ali had appeared as pleader for the defendants Nos. 3 and 4 in that suit, but it is noticeable that he did not sign the compromise in question on behalf of the defendant No. 4.

We should like to note also that he had no authority to compromise the suit on behalf of the defendant No. 4 as his *vakalatnama* did not authorize him to compromise the suit on behalf of the defendant No. 4 and he did not actually compromise the suit on behalf of the said defendant. The defendant No. 4 was not personally present on the date on which the compromise was filed. We regret that the learned Subordinate Judge did not take the trouble of seeing whether the compromise was duly signed by the defendant No. 4 or his duly authorized agent or pleader. He ought to have seen that the compromise was duly signed by or on behalf of the defendant No. 4. The endorsement on the compromise shows that Mr. Zaigham Ali, who had appeared as pleader for the defendants Nos. 3 and 4, had admitted simply the contents of the compromise, but this admission does not and cannot make the compromise binding on the defendant No. 4. The defendant No. 4 never authorized Mr. Zaigham Ali to enter into the compromise in question on his behalf. It is quite clear that the compromise is not binding on the defendant No. 4 and the decree which was passed on the compromise is void as to him. The defendant No. 4 never gave his consent to the compromise in question. The question is :—

> Can the defendant No. 4 now ask the court to remove his name from the decree or reopen the case so far as he is concerned by making the application under consideration?

There is no doubt that the Court has an inherent power to correct its own proceedings. As pointed out in the case of *Devendra Nath Sarkar* v. *Ram Rachpal Singh* (1) "every court has an inherent power to correct its own proceedings. It can set aside its own decree based on a compromise found to have been filed by a person having no authority to make or present the compromise. It is immaterial whether this power is to be

(1) (1926) 3 O. W. N., 277.

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found in section 151 or section 153 of the Code of Civil Procedure, or whether it is a power in review." The decision of the Bombay High Court in the case of *Basangowda Hanmantgowda Patil* v. *Churchigirigowda Yogangowda* (1) was followed in that case. We should like to note that the question of limitation was not considered in those cases. We have sent for the record of the case reported in 3 O.W.N., 277. The record shows that the decree in respect of which the application was made under section 151 of the Code of Civil Procedure was passed by the District Judge on appeal on the 21st of January, 1925. The application under section 151 of the Code of Civil Procedure was made on the 20th of March, 1925. The application was thus made in that case within the period of limitation provided for appeal (or review) from the decree passed in that case and the decree had not become final till then.

Misra and Raza, JJ.

The respondents' learned Counsel contends that the present application for revision is not maintainable as an appeal lies to this Court from the final decree passed by the lower Court in this case. We are not prepared to accept this contention. The learned Counsel has referred to section 96 of the Code of Civil Procedure, but the applicant having preferred no appeal from the preliminary decree was precluded under section 97 of the Code of Civil Procedure from disputing its correctness in any appeal which could be preferred from the final decree. It appears of course that the applicant could appeal from the preliminary decree, as that decree was not passed with his consent, but he failed to do so. The preliminary decree was passed in this case more than two years ago and no appeal was preferred from that decree within the period provided by law. Though the decree in question is void as to the applicant as stated above, but the fact remains that no steps were taken for setting

(1) (1910) I. L. R., 34 Bom., 408.

aside that decree before August, 1928. Muhammad Raza made his first application under sections 151 and 152 of the Code of Civil Procedure on the 4th of August, 1928. He thus made his application under sections 151 and 152 of the Code of Civil Procedure long after the period of limitation provided for appealing from the preliminary decree had expired. The court has of course an inherent power to correct its own proceedings, but the question is :—Has the court such power to correct its decree which is in conformity with the judgment simply on the application of a party though the decree was appealable but no appeal was preferred from the decree within the period of limitation? It was held in the case of *Tota Ram* v. *Panna Lal* (1) that the court cannot ignore the provisions of the law of limitation by appealing to section 151 of the Code of Civil Procedure.

The questions involved in this case are questions of some difficulty and also of importance. We have, therefore, thought it proper to refer the following questions to a Full Bench of this Court under section 14(1) of the Oudh Courts Act (IV of 1925) :—

(1) Is it open to a party to a suit to appeal from the decree passed in the suit on the basis of a compromise purporting to be on his behalf when the person verifying or admitting the said compromise had no authority to enter into it on his behalf?

(2) Is it open to such a party in the suit to invoke the inherent power of the court to get the judgment and the decree amended under sections 151, 152 and 153 of the Code of Civil Procedure so that his name might be removed from the decree, after the period of limitation prescribed for appeal

(1) (1924) I. L. R., 46 All., 631.

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or review has expired and the judgment and the decree have thus become final?

Messrs. *Ali Zaheer, Ali Muhammad* and *Yusuf Ali,* for the applicant.

Messrs. *John Jackson* and *R. B. Lal,* for the opposite party.

STUART, C.J. :—The two questions which have been referred to the Full Bench under the provisions of section 14 of Local Act IV of 1925, are these :—

*(1) Is it open to a party to a suit to appeal from the decree passed in the suit on the basis of a compromise purporting to be on his behalf when the person verifying or admitting the said compromise had no authority to enter into it on his behalf?

(2) Is it open to such a party in the suit to invoke the inherent power of the court to get the judgment and the decree amended under sections 151, 152 and 153 of the Code of Civil Procedure so that his name might be removed from the decree, after the period of limitation prescribed for appeal or review has expired and the judgment and the decree have thus become final.?"

The application under section 151 covers much ground. Before it can be decided it would appear that information should be given to the Bench which at present is not before it. The applicant has not so far filed an affidavit stating when he received information that the preliminary decree had been passed against him and there is need for explanation as to why his Counsel agreed to an adjournment for a fortnight in order to discuss an amicable settlement; why he put before the court the terms of the amicable settlement at which he said both the parties had arrived; why he committed those terms

in writing and why he agreed to them on behalf of his client when according to the applicant his Counsel never informed him of any of these facts. But I have no difficulty in answering the two questions propounded without going into these matters. It is not for this Full Bench to decide on the merits. The merits will be discussed before the Bench which has made the reference. My opinion on the points before us is as follows. It is open to a party to a suit to appeal from a decree passed in the suit on the basis of the compromise purporting to be on his behalf on the ground that the person verifying or admitting the compromise had no authority to enter into it on his behalf. In regard to the second question I consider that it is open to a party in a suit to invoke the inherent power of the court to get the judgment and the decree amended under the provisions of sections 151, 152 and 153 of the Code quite apart from the limitation applicable to the institution of an appeal or a review. He has a right to make the application but it is for the Court to decide whether he has made out a case justifying interference. An unjustified abstention may well be held on the merits to afford sufficient ground for refusing relief. This, however, is a question of merit. He has a right to apply, but it is for the court to see whether his application deserves consideration.

Stuart, C. J.

HASAN, J. :—The two questions referred for decision to the Full Bench are as follows :—

"(1) Is it open to a party to a suit to appeal from the decree passed in the suit on the basis of a compromise purporting to be on his behalf when the person verifying or admitting the said compromise had no authority to enter into it on his behalf?

(2) Is it open to such a party in the suit to invoke the inherent power of the court to get the judgment and the decree amended under

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sections 151, 152 and 153 of the Code of Civil Procedure so that his name might be removed from the decree, after the period of limitation prescribed for appeal or review has expired and the judgment and the decree have thus become final?"

On the first of these questions the argument of the learned Counsel for the appellant is that having regard to the provisions of sub-section 3, section 96, of the Code of Civil Procedure an appeal from the decree passed in this case being a decree with the consent of the parties was excluded by those provisions. The argument in answer is that having regard to the facts which exist behind the decree and the circumstances in which it came to be passed the decree in question in this case must be treated as a decree not passed with the consent of the parties. Speaking for myself I am inclined to accept the argument advanced on behalf of the applicant. It is admitted that the decree on the face of it is a decree passed with the consent of the parties. It is true that if we are to enter into the merits of the circumstances in which the decree in question came to be passed it might be found that the decree is a nullity; but I should think that the proper procedure for discovering the nullity or otherwise will be to initiate proceedings under section 151 or by way of review of judgment. But if the decree *ex facie* is a consent decree it seems to me that an appeal is barred. It appears to me to be wholly immaterial as to whether the decree can be shown by proof of circumstances *aliunde* to be not a consent decree. But when it is so shown it is only then that it would cease to be a decree without consent. The present proceedings are clearly intended to bring about the last-mentioned result. These proceedings may fail or may succeed. If they succeed the decree will only then cease to be a consent decree.

In the present case, however, it is not necessary for me to commit myself definitely to the view stated above. I will assume in answering the first question that an appeal could be preferred and would therefore answer that question in the affirmative. This answer, however, does not lead me to the conclusion that because a party can get an error in a decree rectified by appealing therefrom and if he does not appeal his other remedy, if it is open to him under the provisions of the Code of Civil Procedure, must also be shut against him. This brings me to answering the second question which again I would answer in the affirmative. The fact that no appeal has been preferred while it could be preferred and the further fact that an appeal, if now preferred, would be barred by limitation are wholly immaterial. Considerations such as these may or may not weigh with the court when deciding the application on merits. I can well conceive of cases where a court would be amply justified in correcting its errors in spite of the fact that the same error could have been corrected by the Court of appeal if an appeal had been preferred. In this connection a case where a decree passed by a court turns out to be a nullity may well be stated as an example. Where a decree is a nullity no proceedings are required to set it aside either by way of an appeal or otherwise—See *Khiarajmal* v. *Daim* (1). Any person may draw the attention of the court to the error which has resulted in making a decree a nullity and the court would be well advised in correcting that error even after a lapse of hundred years. I am not at all fantastic when I say hundred years. I very deliberately use that expression. Time is of no consequence in matters like these. I had occasion to decide a similar point in the case of *Sheodarshan Singh* v. *Matadin Singh* (2). The question of limitation can only arise in this way. Will an order passed under section 151 of the

(1) (1904) L. R., 32 I. A., 23. (2) (1924) 1 O. W. N., 160.

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Code of Civil Procedure rectifying an error injuriously affect the other party where he has obtained an advantage in his favour by lapse of time. If this question is answered in the affirmative that may be a reasonable ground on merits to refuse relief under that section. In the present case though the applicant does not state specifically in his application to the court below the ultimate relief which he claims but obviously he cannot get more than an order setting aside the so-called compromise decree in so far as he is concerned and restoring the suit in which that decree came to be passed for trial *de novo* on merits as against him. If he were asking for the dismissal of that suit altogether and thus compelling the plaintiff to institute a fresh suit for obtaining the same relief and if the Court were of opinon that a fresh suit would be barred by time or otherwise I am quite clear in my mind that such a prayer would be refused. But none of these considerations arise at the present stage of the case. As observed by the Hon'ble the CHIEF JUDGE these matters and matters similar to them are the grounds on which the court would be justified in basing its opinion when it comes to form it on the merits of the application.

Hasan, J.

RAZA, J. :—I accept and adopt the judgment of the Hon'ble the CHIEF JUDGE and therefore, answer both the questions in the affirmative.

BY THE COURT :—Replies will now accordingly be returned to the Bench making the reference.

Application allowed.