

1934

SRIJAN
NARAIN
SINGH
v.
RAJA
RAJGAN
MAHARAJA
JAGAT JIT
SINGH

On the question whether the defendants have proved the supply of certain bundles of wire to the plaintiff, in part payment of rent, we agree to the finding of the trial court.

In view of our findings the appeal must fail and we accordingly dismiss it with costs.

Appeal dismissed.

MISCELLANEOUS CIVIL

Before Mr. Justice E. M. Nanavutty and Mr. Justice G. H. Thomas

RAM CHARAN SAHU (JUDGMENT-DEBTOR-APPELLANT) v.
JAMNA PRASAD (DECREE-HOLDER-RESPONDENT)*

1934
November,
16.

*Civil Procedure Code (Act V of 1908), sections 141 and 151—
Misdescription of property in plaint and decree—Court's
power to correct the mistake.*

Where by a mistake of the plaintiff the property in suit is wrongly described in the plaint and the preliminary and final decrees, the court has power to correct the mistake by amending the plaint and the decree. *Aziz Ullah Khan v. Court of Wards, Shahjahanpur* (1), and *Shiam Lal v. Moona Kuar* (2), referred to.

Mr. Bhawani Shankar, for the appellant.

Mr. Hyder Husain, for the respondent.

NANAVUTTY and THOMAS, JJ.:—This is a judgment-debtor's appeal against an order of the learned Subordinate Judge of Bahraich refusing to set aside certain *ex parte* proceedings. It is made under Order IX, rule 13 and sections 141 and 151 of the Code of Civil Procedure.

The facts out of which this appeal arises are briefly as follows:

The appellant Ram Charan mortgaged five villages under a mortgage deed, dated the 1st of January, 1916, to one Ranjit Khan. The names of these five villages as entered in the mortgage deed are as follows:

*Miscellaneous Appeal No. 96 of 1933, against the order of Pandit Ganga Shankar Misra, Subordinate Judge of Bahraich, dated the 20th of May, 1933.

(1) (1932) 30 A.L.J., 784.

(2) (1933) 11 O.W.N., 550.

Turkauli, Khajauli, Aurahra-Salempur, Patna, and Mankapur Tappa Khas situate in the district of Azamgarh. The mortgagee Ranjit Khan filed his suit on the 3rd of February, 1921, on the basis of this mortgage deed and in the plaint he inaccurately described the mortgaged villages as Triloki, Lakhuchobe, Udra-Salempur, Patna and Manikpur in the Azamgarh District. The mistake in the plaint was not noticed by either party or by the Court and accordingly a preliminary decree was passed in favour of the mortgagee Ranjit Khan on the 15th of June, 1921, in which the names of the villages were shown as entered in the plaint. A final decree was also prepared on the 19th of December, 1922, and the same mistakes continued to be shown in that decree also. An amendment of the plaint, judgment and decree was applied for and granted on the 11th of April, 1931, and the names of the villages entered in the plaint and in the preliminary and final decrees were made conformable with the names of the villages as entered in the mortgage deed of the 1st of January, 1916. About a year and a half later, on the 14th of October, 1932, the judgment-debtor applied under order IX, rule 13 and sections 141 and 151 of the Code of Civil Procedure for restoration of the suit to its original number. This application was dismissed on the 20th of May, 1933, and the prayer of Jamna Prasad, who had purchased the mortgaged property from Ranjit Khan the decree-holder, as set forth in his petition of 20th May, 1933, was granted.

The judgment-debtor Ram Charan has filed this appeal against that order.

We have heard the learned counsel for the judgment-debtor appellant as also for the decree-holder respondent. In our opinion there is no force in this appeal. It is the duty of every Civil Court to correct any mistake in any judgment, decree or order or errors arising therein from any accidental slip or omission. This power is

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granted under section 152 of the Code of Civil Procedure and under section 151 of the Code the Civil Court is vested with inherent power to make such orders as may be necessary for the ends of justice. In the present case it is admitted by both parties that the amendments allowed by the lower Court were made in conformity with the mortgage deed of 1st January, 1916, which gave the correct names of the villages mortgaged by Ram Charan to the original decree-holder Ranjit Khan.

In *Aziz Ullah Khan v. The Court of Wards, Shahjahanpur* (1), it was held that the language of section 152 of the Code of Civil Procedure was wide enough to cover the correction of mistakes made by the parties themselves, and that the power of the Court to make corrections necessary for the ends of justice was not confined only to powers exercisable under section 152, and that extensive powers could also be exercised under sections 151 and 153 of the Code of Civil Procedure, and in that case the accidental slip made in the plaint, decree, sale certificate and *dakhlanama* was corrected as the correction was necessary for the ends of justice.

Again in *Pandit Shiam Lal v. Moona Kuar* (2), one of us sitting singly has held that under sections 151 and 152 of the Code of Civil Procedure this Court could amend the plaint, judgment and decree where by a mistake the *hadbast* number of the village was shown as the *khasra* number of the plot mortgaged and the mistake was repeated in the judgment of the Court as well as in the preliminary and final decree prepared in the case. It is unnecessary for us to cite any authority for the conclusion arrived at.

In our opinion the learned Subordinate Judge was perfectly right in allowing the amendment and in rejecting the objection of the judgment-debtor appellant.

The plea that the purchaser from the original decree-holder did not purchase village Patna can be taken by

(1) (1932) 30 A.L.J., 784.

(2) (1933) 11 O.W.N., 550.

the appellant when the decree-holder seeks to execute the decree which he has purchased from Ranjit Khan.

For the reasons given above, we dismiss this appeal with costs.

Appeal dismissed.

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RAM
CHARAN
SARU
v.
JAMINA
PRASAD

APPELLATE CIVIL

*Before Mr. Justice E. M. Nanavutty and Mr. Justice
G. H. Thomas*

RAM NATH AND ANOTHER (PLAINTIFFS APPELLANTS) v. DES-
RAJ SINGH AND OTHERS (DEFENDANTS RESPONDENTS)*

1934
November,
16

Legitimacy—Presumption of legitimacy, when arises—Burden of proof, when shifted on the person alleging illegitimacy.

The legal presumption of the legitimacy of a person arises only if it is proved that his mother was lawfully married to his father and the burden of proof then shifts on the person alleging illegitimacy to prove that fact. If the person alleging legitimacy fails to prove it, he cannot rely upon the presumption and cannot throw the burden of proof of illegitimacy on the person alleging it. *Aparbal Singh v. Narpat Singh*, distinguished

Mr. H. D. Chandra, for the appellants.

Messrs. *Ram Bharose Lal and Suraj Sahai*, for the respondents.

NANAVUTTY and THOMAS, JJ.:—This is a plaintiffs' appeal against an appellate judgment and decree of the Court of the learned District Judge of Fyzabad upholding the judgment and decree of the Court of the Additional Subordinate Judge of Fyzabad dismissing the plaintiffs' suit.

The facts out of which this appeal arises are briefly as follows:

Plaintiff No. 1, Ram Nath Dube, alleged that the property specified in list A attached with the plaint was

*Second Civil Appeal No. 233 of 1933, against the decree of K. N. Wanchoo, Esq., I.C.S., District Judge of Fyzabad, dated the 10th of May, 1933, confirming the decree of Babu Shiva Charan, Additional Subordinate Judge of Fyzabad, dated the 29th of July, 1932.