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We are therefore of opinion that while the Courts below are right in holding that the decree-holder cannot be deprived of his right to execute the decree by reason of his purchase of the eight annas share in the under-proprietary tenure it would be only just and equitable that the decree-holder should be required to give credit for half of the amount of the decree for which he has become liable under section 154 of the Oudh Rent Act. The amount for which execution is sought should therefore be reduced by half.

Srivastava and Ziaul Hasan, JJ.

The result is that we allow the appeal in part and modify the decree of the lower appellate court by directing that the execution should be proceeded with only in regard to half of the decretal amount. In the circumstances we direct that the parties should bear their own costs.

Appeal partly allowed.

REVISIONAL CIVIL

Before Sir C. M. King, Kt., Chief Judge and Mr. Justice H. G. Smith

MOHAMMAD YASIN KHAN (PLAINTIFF-APPLICANT) *v.* MUSAMMAT HANSA BIBI AND OTHERS (DEFENDANTS-OPPOSITE-PARTY)*

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Civil Procedure Code (Act V of 1908), sections 115, 151 and 152—Limitation Act (IX of 1908), section 5—Judgment and decree not in accordance with intention of Court—Application for amendment made after expiry of limitation for appeal—Amendment, whether can be allowed—Time for filing of appeal, if can be extended—Revision against order regarding amendment—Jurisdiction of High Court to interfere in revision.

Where the operative portion of a judgment and of the decree is not in accordance with the intention of the Court, an application for their amendment should be allowed even after the period for filing the appeal against the decree has expired, as

*Section 115 Application No. 8 of 1934, against the order of Shaikh Mohammad Tufail Ahmad, Munsif of Utraula, district Gonda, dated the 12th of November, 1933.

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limitation can be extended under section 5 of the Limitation Act so as to allow of an appeal against the amended decree. *Alice Maud, Mrs.* v. *J. C. Galstaun* (1), *Deep Singh* v. *Raghu Nath Singh* (2), and *Nanda Lal Ganguli* v. *Dasarathi Mukerjee* (3), referred to.

An order rejecting an application for amendment of a judgment and decree, where they are not in accordance with the intention of the Court, is open to revision under section 115, C. P. C., on the ground that the Court failed to exercise a jurisdiction vested in it. Even if it be held upon a strict construction of section 115 of the Code of Civil Procedure that the High Court is precluded from interfering under that section, it is open to it to interfere under section 151 of the Code of Civil Procedure. *Tribeni Singh* v. *Mohammad Musharraf Ali* (4), relied on.

Messrs. *Mohammad Ayub* and *Siraj Husain,* for the applicant.

Mr. *Zahur Ahmad,* for the opposite party.

KING, C.J. and SMITH, J.:—This is an application in revision against an order passed by the learned Munsif of Utraula refusing to amend a decree under section 152 of the Code of Civil Procedure.

The plaintiff claimed Rs.680 on the basis of a promissory note, dated the 30th of March, 1930, executed by one Ziaullah. After executing this pronote Ziaullah made a gift of his whole property, on the 5th of June, 1930, in favour of his wife defendant No. 1. Soon after Ziaullah's death the present suit was instituted against the defendant No. 1 and the other heirs of Ziaullah. The plaintiff alleged that the defendant No. 1 was personally liable for the whole debt to the extent of the gifted property of Ziaullah in her hands as being the universal donee under section 128 of the Transfer of Property Act. Judgment was delivered on the 31st of May, 1933, and the learned Munsif held that the defendant No. 1 was the universal donee within the meaning of section 128, and that she was liable under that section for the whole amount of the debt due under the promissory note

(1) (1927) A.I.R., Cal., 114.
(2) (1930) A.I.R., Oudh, 463.
(3) (1932) A.I.R. Cal., 534.
(4) (1931) 8 O.W.N., 1121.

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executed by Ziaullah. The Court then proceeded to pass an order in the following terms:

"The suit of the plaintiff is therefore decreed with costs against defendant No. 1 to the extent of the assets of the deceased in her hands."

On the 23rd of October, 1933, the present application for amendment of the judgment and decree, under section 152 of the Code of Civil Procedure, was filed. It was alleged that the language of the operative portion of the judgment, and of the decree, was not in accordance with the intention of the Court. The word "assets" was interpreted to mean the property owned by Ziaullah at the time of his death, and as he owned no property whatever at the time of his death, having gifted it to his wife, the decree was incapable of execution.

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The learned Munsif held that the use of the word "assets" was due to an accidental slip in the judgment. What he meant was that the decree was passed against the defendant No. 1 to the extent of the gifted property of the deceased in her hands. In spite of coming to this finding, the learned Munsif thought that he would not be justified in amending the judgment and decree so as to give effect to his real meaning. The chief reason for declining to make the amendment was that any appeal against the decree had become time-barred, and it would not be fair to amend the decree so as to prejudice the defendants when they were no longer able to appeal against the amended decree. He also held that the plaintiff was to blame for not appealing against the decree, and was not entitled to have it amended by an application under section 152 of the Code of Civil Procedure.

For the applicant it is contended that the Court below was wrong in thinking that no appeal would lie against the amended decree. As authority for this proposition the case of *Mrs. Alice Maud* v. *J. C. Galstaun* (1), has been cited. In that case it was held that the amended

(1) (1927) A.I.R., Cal., 114.

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decree supersedes the original decree, and so an appeal would lie against the amended decree. We think it is unnecessary for us to decide that point, as good authority has been shown for the view that even if an appeal against the amended decree would ordinarly be barred by limitation, nevertheless time could reasonably be extended under section 5 of the Limitation Act in view of the amendment. On this point the rulings in *Deep Singh* v. *Raghu Nath Singh* (1) and *Nanda Lal Ganguli* v. *Dasarathi Mukerjee* (2), are applicable. We think that limitation could, if necessary, be extended under section 5 so as to allow of an appeal by the defendants against the amended decree in consequence of the amendment.

For the opposite party it has been strongly urged that this Court cannot interfere with the order passed by the Court below under section 115 of the Code of Civil Procedure as no question of jurisdiction is raised. Against this view we have a clear authority of a Bench of this Court in *Tribeni Singh* v. *Mohammad Musharraf Ali* (3). In that case also the lower Court had refused to amend a decree under section 152 of the Code of Civil Procedure, and it was contended that no application for revision was maintainable under section 115 of the Code of Civil Procedure, because no question of jurisdiction was involved. The learned Judges remark:

"We find ourselves unable to accede to this contention. The learned Munsif in rejecting the application under section 152 has in our opinion failed to exercise the jurisdiction vested in him."

Even if it be held upon a strict construction of section 115 of the Code of Civil Procedure that we are precluded from interfering under that section, we are of opinion that it is open to us to interfere under section 151 of the Code of Civil Procedure. On the merits we think it is perfectly clear that the judgment and decree should be

(1) (1930) A.I.R., Oudh, 463. (2) (1932) A.I.R., Cal., 534.
(3) (1931) 8 O.W.N., 1121(1125).

amended. As they are now worded, they fail to give effect to the real intention of the Court. We think that under section 151 we can interfere, as this is clearly a case in which an amendment is required in the interests of justice. It is perfectly clear that the learned Munsif in writing his judgment used the word "assets" in a loose sense as meaning the property which used to be owned by Ziaullah and which had been gifted before his death to the defendant No. 1. The learned Munsif against whose order this application has been made is the same Munsif who delivered the judgment, and it is clear that he himself realised that he had made an accidental slip in using the word "assets". We think it would amount to a gross miscarriage of justice if the plaintiff, having succeeded in establishing his case, and having got a finding in his favour, should be deprived of the fruits of the decree merely on account of the accidental slip in the wording of the operative portion of the judgment.

King, C.J. and Smith, J.

We therefore allow the application, and set aside the order of the Court below, and direct that under section 152 the judgment and decree in question shall be amended by substituting the words "gifted property" for the word "assets" wherever that latter word occurs in the operative portion of the judgment and in the decree. The applicant will get his costs in this Court and in the Court below.

Application allowed.