

## REVISIONAL CIVIL

Before Mr. Justice E. M. Nanavutty and Mr. Justice  
Ziaul Hasan

1937  
January, 22

UMA SHANKAR, (APPLICANT) v. LALA MURARI DAS AND  
ANOTHER (OPPOSITE-PARTY)

*Civil Procedure Code (Act V of 1908), sections 11, 115 and 151*  
—Res judicata—Application for amendment of decree dis-  
missed by trial court—Appellate court disposing of appeal  
not on merits but wrongly holding that he was dealing with  
execution proceedings and so could not amend decree—Ap-  
plication for amendment of decree, if barred by res judicata  
—Order refusing to amend decree—High Court, if could  
interfere in revision—High Court's powers under section  
151.

Where a judgment-debtor's application for amendment of  
decree is dismissed by the trial court on the ground that there  
is no error in the judgment or decree and the appellate court  
disposes of the appeal against that order not on merits but  
holding that he was dealing with execution proceedings and  
could not amend the decree, it cannot be said that the appel-  
late court "heard and finally decided" the judgment-debtors'  
application for amendment of the decree and it cannot be held  
that the question of the amendment of the decree is barred by  
any decision of a competent court.

If it be held that upon a strict construction of section 115  
of the Code of Civil Procedure the High Court is precluded  
from interfering in revision with an order refusing to amend a  
decree, it is still open to it to interfere section 151 of the Code.  
*Mohammad Yasin Khan v. Hansa Bibi* (1), relied on.

Mr. *Bhagwati Nath Srivastava*, for the applicant.

Mr. *S. C. Das*, for the opposite party.

NANAVUTTY and ZIAUL HASAN, JJ.:—This application  
for revision against an order of the learned Civil Judge  
of Sultanpur arises out of an application made by the  
applicant for amendment of a decree.

The decree was passed in 1911 against Ramraj and  
others in favour of Narotam Das, father of Murari Das,  
opposite party No. 1, on foot of a simple mortgage. The  
defendants had admitted the claim and the decree was

\*Section 115 Application No. 101 of 1935, against the order of Babu Avadh  
Behari Lal, Civil Judge of Sultanpur, dated the 24th of August, 1935.

(1) (1935) I.L.R., 11 Luck., 413.

passed on their admission. The decree-holder applied for the preliminary decree being made absolute in 1913. On the 17th of January, 1913, the judgment-debtors applied for amendment of the judgment and decree praying that the provision for payment of future interest be deleted on the ground that the plaintiff himself did not ask for future interest. On the next day, that is, the 18th of January, 1913, the judgment-debtors put in an application of objections to the decree-holder's application for the final decree and in this application also they reiterated the objection with regard to future interest awarded by the decree. These objections were disposed of by the learned Subordinate Judge on the 27th of August, 1913, and in this order he considered not only the objections raised by the judgment-debtors to the passing of the final decree but also their application for amendment of the judgment and decree. It may be mentioned that on the night between the 5th and 6th of February, 1913, the record of this case was destroyed by fire along with some other records and the files of suits had to be re-constructed by the aid of whatever escaped from the fire and of certified copies taken from parties. It may also be noted that the preliminary decree provided for payment of future interest at 24 per cent. per annum. The learned Subordinate Judge in his order of the 27th of August, 1913, referred to the mutilated condition of the record and relying on the order sheet held that future interest was ordered to be paid at the rate mentioned. He accordingly dismissed the application on the ground that there was no error in the judgment or the decree, but at the same time he ordered that future interest from the date of his order would run at 6 per cent. per annum. Against this order the judgment-debtors preferred an appeal and the learned District Judge by his order dated the 29th of April, 1914, dismissed the appeal holding that the court below had no power even to interfere with the original decree. A second appeal was filed by the

1937

UMA  
SHANKAR  
v.  
LALA  
MURARI  
Das

*Nanavutti  
and Ziaul  
Hasan,  
JJ.*

1937

UMA  
SHANKAR  
v.

LALA  
MURARI  
DAS

*Nanavutty  
and Ziaul  
Hasan,  
J.J.*

judgment-debtors and the learned Additional Judicial Commissioner in his order dated the 7th of December, 1915, said—

“I find that the order of the learned District Judge is an absolutely correct order. We are only concerned with the execution of the decree. I therefore dismiss appeals Nos. 353 and 356 of 1914 . . .”

On the 26th of May, 1923, Sukhraj Singh, opposite-party No. 2 purchased a portion of the mortgaged property at an auction held in execution of a decree against the judgment-debtors and on the 20th of May, 1930, that property was purchased by Uma Shankar, the present applicant, in execution of a decree against Sukhraj Singh. Uma Shankar was made a party by the decree-holder on the 29th of January, 1935, and on the 25th of May, 1935, he put in the application for amendment of the decree from which this application arises.

The learned Civil Judge dismissed the application for amendment of the decree holding that the matter had been settled long ago between the decree-holder and the judgment-debtors. He was also of opinion that the application was frivolous and vexatious and therefore awarded Rs.200 as special costs under section 35-A of the Code of Civil Procedure to the decree-holder opposite-party.

We have heard the learned counsel for the parties at length and are of opinion that the learned Civil Judge was not right in holding that the matter is *res judicata*. No doubt that trial court decided the matter between the judgment-debtors and the decree-holder but the court of second appeal disposed of the judgment-debtors' appeal not on the merits but on the ground that the court was concerned with the execution of the decree. What the learned Additional Judicial Commissioner meant by this obviously was that the execution court could not go behind the decree and had no power to alter its terms. It cannot by any stretch of imagination be said that the

learned Additional Judicial Commissioner "heard and finally decided" the judgment-debtors' application for amendment of the decree. It was contended on behalf of the opposite-party decree-holder that there was no application for execution of the decree pending at the time that the learned Additional Judicial Commissioner decided the judgment-debtors' appeals. This may be so, but rightly or wrongly the learned Additional Judicial Commissioner thought that he was dealing with execution proceedings and on that ground he did not consider it necessary to decide the question whether the decree should be amended or not. We are definitely of opinion that the question of the amendment of the decree with regard to future interest is not barred by any decision of a competent court and that the learned Civil Judge was in error in throwing out the present application on that ground.

It was also urged on behalf of the decree-holder that as the court below did not go beyond its jurisdiction in dismissing the applicant's application for amendment of the decree, no revision under section 115 of the Code of Civil Procedure can lie. In the case of *Mohammad Yasin Khan v. Hansa Bibi* (1) it was held however, that even if it be held that upon strict construction of section 115 of the Code of Civil Procedure the High Court is precluded from interfering in revision with an order refusing to amend a decree it is still open to it to interfere under section 151 of the Code.

We therefore allow this application with costs, set aside the order of the lower court and order the amendment of the decree so as to delete therefrom the provision for payment of future interest.

*Application allowed.*

(1) (1935) I.L.R., 41 Luck., 413.

1937

---

 UMA  
SHANKAR  
v.  
LALA  
MURARI  
DAS

*Nanavutty  
and Ziaul  
Hasan,  
J.J.*