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a police officer to prevent. Presumably, however, in the case of cognizable offences even the learned author of this book would agree that the second half of the section might be put into operation. The matter need not be further discussed here because, in view of the position which I think should be adopted with regard to the sentence, the question is not one which need here be decided. The affair here was evidently of a very tentative and not highly important nature. The matter was indeed by this police officer himself regarded as too insignificant to be worth any serious consideration and in the words of the learned Magistrate :

“ The sub-inspector simply laughed over this offer and replied that it was not his habit to give copies of police papers in his custody;”

and, indeed, later, he seems to have told this story round amongst his friends almost as a good joke. That he was perhaps wrong in taking this nugatory view of what had taken place I have no doubt; but I think that, under the circumstances, the sentence is unduly severe.

Whilst, therefore, seeing no ground for altering the conviction in this case I have come to the conclusion that the sentence should be reduced to one of rigorous imprisonment for six months. The fine will stand.

ADAMI, J.—I agree.

Sentence reduced.

REVISIONAL CIVIL.

Bejore Das and Ross, J.J.

HARIHAR PRASAD NARAIN DEO

v.

MAHESWARI PRASAD NARAIN DEO.*

1924.

March, 28.

Code of Civil Procedure, 1908 (Act V of 1908), sections 2(2), 151, Order XX, rule 3—Partition suit—decision on issue

* Civil Revision No. 348 of 1923, from a decision of Rai Bahadur Surendra Nath Mukherjee, Subordinate Judge of Patna, dated the 21st July, 1923.

as to court-fee, whether is a judgment—question re-opened, illegality of proceeding—transfer pendente lite—addition of transferee as plaintiff, whether additional court-fee payable.

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In defence to a suit for partition it was pleaded, *inter alia*, that the property was an impartible estate and that the court-fee paid on the plaint was insufficient. The Subordinate Judge decided that the court-fee was sufficient, and no appeal was preferred against that order. In the meantime the defendant died and his sons were substituted in his place as his representatives. Certain transferees *pendente-lite* of portions of the property from the plaintiff were also added as plaintiffs. The suit then came before another subordinate judge who took up the question as to the sufficiency of the court-fee again and decided that the plaintiff was bound to pay an *ad valorem* fee.

Held, (i) that the order of the first subordinate judge as to the sufficiency of the court-fee was a judgment and could not be altered save as provided by Order XX, rule 3, of the Code of Civil Procedure, 1908;

(ii) that the court had no power under section 151 to alter the order;

Chandramani Koer v. Basdeo Narain Singh(1), distinguished;

(iii) that the devolution of interest on the transferees *pendente lite* made no difference in the court-fee payable inasmuch as they merely represented a part of the interest of their vendor, the original plaintiff.

Application by the plaintiff.

This application arose out of a suit by a younger brother against his elder brother for partition. The defence was that the property was an impartible *raja*. An issue was raised as to the sufficiency of the court-fee. The Subordinate Judge, before whom the suit originally came, decided this issue in favour of the plaintiff holding that the suit was one for partition only. No appeal was made against this order. In the meantime the elder brother died and his sons were substituted in his place as his representatives. The

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plaintiff moreover sold a portion of the property to other persons who were added as plaintiffs. The suit then came before another Subordinate Judge who took up the question as to the sufficiency of the court-fee again and decided that the plaintiff was bound to pay an *ad valorem* court-fee.

Hasan Imam (with him *Jafar Imam*, *Susil Madhab Mullick* and *P. K. Mukherjee*), for the appellant.

Sultan Ahmed (with him *Shiva Narayan Bose*), for the respondent.

Ross, J. (after stating the facts, as set out above, proceeded as follows):—

It is contended on behalf of the plaintiff in the present application that the Court had no power to pass the order complained of. The learned Subordinate Judge has referred to the decision in *Chandramani Koer v. Basdeo Narain Singh* (1). That was a case where there was an application for review and it is conceded by the learned Counsel on behalf of the petitioner that there is power to review an order of this kind on an application properly made; but in the present case there was no application for review. The learned Counsel for the opposite party relies on section 151 of the Civil Procedure Code. It is true that a reference to that section was made in the decision referred to above although the reference was unnecessary as there had been an application for review of judgment. Order XX, rule 3, lays down that the judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added to, save as provided by section 152 or on review; and "judgment" is defined in section 2 of the Code to mean the statement given by the Judge of the grounds of a decree or order. Clearly, therefore, this judgment, for it is a judgment, could not be altered

(1) (1919) 4 Pat. L. J. 57.

save as provided by section 152 or on review. It is clear that section 151 cannot confer jurisdiction on the Court to do what is prohibited by positive law. Section 152 refers merely to clerical or arithmetical errors and it is of no assistance in the present case. In my opinion, therefore, the learned Subordinate Judge had no jurisdiction to alter the order of his predecessor in the way he has done.

It was further argued however, on behalf of the opposite party, that inasmuch as there are now added plaintiffs who have taken a transfer of part of the property, the nature of the suit has been altered and the Court is entitled to consider whether the purchaser-plaintiffs are in possession, and if they are not, to demand an *ad valorem* court-fee. In my opinion the devolution of interest pending the suit can make no difference in the court-fee to be paid. These plaintiffs come in in the interest of their vendor, the original plaintiff, and their position is identical with his.

I would, therefore, allow this application and set aside the order of the Subordinate Judge. The petitioner is entitled to his costs.

DAS, J.—I agree.

Application allowed.

APPELLATE CIVIL.

Before Jwala Prasad and Kulwant Sahay, J.J.

DEVENDRA NATH GHOSH

v.

SAMBHU NATH PANDEY.*

1924.

March, 28.

Contract Act, 1872 (Act II of 1872), section 74—Amending Act, 1899 (Act VI of 1899)—Mining lease executed in 1895—stipulation for payment of royalty in four kists and

* Appeal from Original Decree No. 23 of 1921, from a decision of Babu Brajendra Kumar Ghosh, Subordinate Judge of Dhanbad, dated the 14th August, 1920.