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adopt the procedure he did and inasmuch as the grounds attacking the decision of the trial Court on the merits were definitely abandoned before the learned District Judge I accept both the appeals and grant the plaintiff a decree in each case in the terms of the decree passed by the trial Court. The plaintiff will be entitled to his costs in this Court in both the appeals, and in the Court of the District Judge.

BROADWAY J.

ZAFAR ALI J.—I agree.

ZAFAR ALI J.

N. F. E.

Appeal accepted.

MISCELLANEOUS CIVIL.

Before Mr. Justice Harrison and Mr. Justice Addison.

HIS HIGHNESS THE MAHARAJA OF FARIDKOT (PLAINTIFF) Petitioner

versus

ANANT RAM AND OTHERS (DEFENDANTS) Respondents.

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May 28.

Civil Miscellaneous No. 126 of 1925.

(Civil Appeal No. 1919 of 1920.)

Civil Procedure Code, Act V of 1908, Order XLI, rules 20 and 33—Appellate Court—whether competent to implead a party omitted in lower Court's decree—Sections 151 and 152—Inherent power of Court—Whether applicable, when trial Court not moved to rectify the omission.

In execution proceedings by *K.* and *J.* objections filed by *R.* to the attachment of certain property were dismissed, whereupon *R.* brought the present suit against *K.* and *J.* The trial Court dismissed the suit *in toto*, but both in its judgment and in framing the decree omitted all reference to *A. N.*, one of *J.'s* sons, who, on the death of *J.*, had been impleaded in the suit. *R.* appealed from this decree, and on the day fixed for the hearing of the appeal, applied to have *A. N.* added as a respondent.

Held, that it is for the Court which makes such omission and that Court alone to put it right under section 151 of the Code. To hold that an appellate Court could at this stage

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implead a person who has acquired an absolute right by lapse of time or by the omission of his name from the decree, would be tantamount to denying all finality to litigation.

Held further, therefore, that it was for *R.*, being the party aggrieved, to have moved the trial Court, and this not having been done, the appellate Court had no power to act under either rule 20 or rule 33 of Order XLI, nor does section 152 apply to the case.

Haridas Dey v. *Kailash Chandra* (1), and *Chetty* v. *Po'u* (2), followed.

Amar Singh v. *Kanshi* (3) and *Sri Mati Hemanigini Debi* v. *Haridas Banerjee* (4), dissented from.

Mangat Rai v. *Alia* (5), followed.

Application under Order XLI, rule 20, Civil Procedure Code, praying that Lala *Amar Nath*, Vakil, *be made a respondent in the appeal.*

MUHAMMAD SHAFI, MUHAMMAD RAFI and M. L. PURI, for Petitioner.

TEK CHAND, M. S. BHAGAT, JAGAN NATH BHANDARI and BALWANT RAI, for Respondents.

The judgment of the Court was delivered by—

HARRISON J.—On the date fixed for the hearing of this appeal counsel for the respondent raised a preliminary objection that one Amar Nath, son of Joti Mal, who had been impleaded in the trial Court, was not shown as a respondent and that the appeal could not proceed without him, as the result could only be a dead letter. Counsel for the appellant applied for an adjournment to enable him to make an application to deal with the matter, and presented a petition on 11th February 1925, praying that Amar Nath should be brought on the record under Order XLI, rule 20. This application was heard on the 17th May 1926 and at the very opening of his reply Mr. Tek Chand contended that the proper course would

(1) (1918) 44 I. C. 480.
(2) (1920) 63 I. C 973.
(3) (1922) 76 I. C. 285.
(4) (1918) 3 Pat. L. J. 409.
(5) 92 P. R. 1919.

have been to apply for amendment of the decree as a necessary preliminary to any action in this Court under Order XLI, rule 20, and that that application for amendment should have been made to the trial Court.

The necessary facts are these:—Two decrees were passed in favour of Kashi Ram and Joti Mal, the original defendants in this case, against a certain Mr. Coates of Ferozepore. In execution of these decrees the decree-holders attached a house. An objection was lodged by Raja Har Indar Singh, the Raja of Faridkot, to the effect, that this house had been sold to him, that he was the owner of it, and that the judgment-debtor had no right, title or interest therein. This objection was dismissed and the decree-holders, therefore, as pointed out by Mr. Tek Chand, acquired a definite right defeasible only by a suit. A suit was instituted by the Raja and while it was proceeding Joti Mal died. An application was made to bring his five sons on the record and this was done. They included *Lala* Amar Nath, Pleader. The suit was dismissed *in toto* and the decree omitted all reference to this man *Lala* Amar Nath though the names of the four brothers were entered. The judgment curiously enough does not contain any reference to this man Amar Nath by name and counsel for the appellant urges that it is through no neglect of his that the name was not entered in the appeal, more especially as the counsel, who actually presented the appeal had only come into the case at the stage of arguments in the trial Court. It is contended, therefore, that this is a fit and proper case for the impleading of this man Amar Nath in virtue of Order XLI, rule 20, and it is further contended that even if Order XLI, rule 20, be not applicable, a decree can be passed regarding his share or rights in the property or in the decree under Order XLI, rule 33. A large number of rulings

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have been quoted, most of which have no applicability to the peculiar facts of this case. Counsel for the appellant contended throughout that two courses and two courses only were open to him, one was to move the trial Court to amend the decree and the other to move this Court to implead Amar Nath under Order XLI, rule 20. He did not see fit to take any action in the matter of amendment of the decree, and he contended that, although he had taken no such action and there had been no amendment, it was still open to this Court to act under Order XLI, rule 20, and this because Amar Nath was, in the words of rule 20, 'interested in the result of the appeal.' He could give us no authority in support of this contention but maintained that whether Amar Nath were impleaded or not the decision of the appeal, if in favour of the appellant, would affect him. We are not concerned at this stage with the possible result of not impleading Amar Nath and what we have to see is whether Order XLI, rule 20, enables us to accede to the prayer of the appellant. We are further not concerned at this stage with the advisability or propriety of taking action, if that action be legal. We have to see whether it is within our powers to act or not before we consider any further development.

Now, the important words are "interested in the result of the appeal," and Mr. Tek Chand has contended very logically and very clearly that under the peculiar facts of this case Amar Nath is not directly interested in the result inasmuch as, not being a party to the decree, it is immaterial to him whether that decree is varied or maintained. He has further explained that Amar Nath is in a peculiarly fortunate position in that by the omission of his name he is more favourably situated than had the suit been dismissed

against him. It was dismissed against his brothers and they have acquired a right defeasible only by a successful appeal. He has acquired an indefeasible right by the omission of his name. But it is contended by the other side, 'his name should have been included.' Quite so, but it was not, and it was for the aggrieved party, the plaintiff, who is now the appellant, to move the trial Court to put matters right and to add the necessary name. As this has not been done Mr. Tek Chand contends his client cannot be said to be interested in the result, and, therefore, Order XLI, rule 20, does not apply and *a fortiori* Order XLI, rule 33, is also inapplicable. He relies on *Haridas Dey* v. *Kailash Chandra* (1) and *Chetty* v. *Po'u* (2). As against these authorities we find that in *Amar Singh* v. *Kanshi* (3) a Single Judge of this Court held that he was competent to implead under Order XLI, rule 20, a man who had not been made a party to the decree though he had been a party to the suit.

For the reasons given in *Haridas Dey* v. *Kailash Chandra* (1) we find ourselves unable to agree with this view and we also find ourselves unable to agree with the views expressed in *Sri Mati Hemanigini Devi* v. *Haridas Banerjee* (4). In our opinion, to hold that an appellate Court can implead a person, who has acquired an absolute right, as he has in this case by the lapse of time or by the omission of his name from the decree, would be tantamount to denying all finality to litigation. It might have been urged that had the mistake not been discovered until after this Court had adjudicated upon this appeal that mistake could then have been put right according to the view taken by three

(1) (1918) 44 I. C. 480.
(2) (1920) 63 I. C. 973.
(3) (1922) 76 I. C. 285.
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High Courts. This may be so, but such action would be under section 152, and the reasoning apparently on which those decisions were based is that it is for the Court, which makes the mistake to put it right and inasmuch as had we adjudicated on the merits of the appeal before the mistake had been discovered we should have omitted the name of Amar Nath it would have been for us to put the matter right.

We would have ourselves been prepared to take action under section 152 or 151, read singly or together, had we had power to do so. We ourselves raised the point and put it to counsel for the respondents and he has satisfied us that we, as an appellate Court, have no power under these sections to implead Amar Nath at this stage. He points out that section 152 does not go so far as the old section and that it only deals with clerical or arithmetical mistakes or errors arising from any accidental slip or omission, and the meaning of this word 'omission' is explained in *Mangat Rai* v. *Alia* (1) and other rulings. It is therefore section 151, to which we must turn to discover the inherent powers of the Court to bring the decree into consonance with its judgment, and we have no manner of doubt that it is the Court in which the mistake has been made, and that Court alone, which can put the matter right. We do not understand the reason why the appellant did not make the necessary application to the trial Court but he has failed to take action and, as we are unable to act on our own motion, we have no course open to us but to refuse to implead *Lala* Amar Nath and dismiss this application with costs. We do so.

N. F. E.

Appeal dismissed.

(1) 92 P. R. 1919.