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perty purchased by the defendants, for that has to be deducted from the whole amount in order to ascertain the amount that the plaintiffs have now to pay.

We ask the lower Court to find on this issue, *viz.*, what proportionate amount of the whole mortgage-debt due under the Exhibit 56 are the defendants liable for in respect of Survey Nos. 22, 23 and 41?

Evidence can be given by the parties, and the finding should be certified to this Court within a month.

Issue sent down.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Parsons.

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BAPU AND OTHERS (ORIGINAL DEFENDANTS), APPLICANTS, *v.* VAJIR AND OTHERS (ORIGINAL PLAINTIFFS), OPPONENTS.*

Civil Procedure Code (Act XIV of 1882), *Secs.* 551, 577 *and* 584—*Dismissal of appeal—Power of the lower Court to amend decree after dismissal of appeal—Practice—Procedure.*

The dismissal of an appeal under section 551 of the Civil Procedure Code (Act XIV of 1882) leaves the decree of the lower Court untouched, neither confirmed, nor varied, nor reversed, and it remains the decree of the lower Court which can amend it, in order to bring it into accordance with its judgment.

APPLICATION under the extraordinary jurisdiction of the High Court (section 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Ráo Bahádur Chunilal Maneklal, First Class Subordinate Judge of Dhulia, with appellate powers.

The plaintiff sued to establish his right to have a mortgage-bond passed to him by the defendants registered under the Registration Act (III of 1877). The defendants having denied execution before the Registrar, registration of the bond was refused.

The defendants denied execution of the bond.

The Subordinate Judge (Ráo Sáheb Vaman M. Bodas) found that the execution of the bond by the defendants was not proved. He, therefore, rejected the claim.

* Application No. 108 of 1895 under Extraordinary Jurisdiction.

On appeal by the plaintiff the Judge found that the execution of the bond by the defendants was proved, and he passed the following decretal order:—

"I reverse the decree of the Court below and award the plaintiff's claim with costs. Costs of the plaintiff in both the Courts should be borne by the defendants in addition to their own."

The defendants having preferred a second appeal (No. 653 of 1894), the High Court dismissed it under section 551 of the Civil Procedure Code (Act XIV of 1882).

Subsequently the plaintiff applied to the Judge for a review of his judgment in appeal, on the ground that it was necessary that the decree should contain an order directing the registration of the document. The Judge ordered the decree to be amended as prayed for. The following is an extract from his judgment:—

"The Code of Civil Procedure, section 574 and section 579 require that the judgment and decree of an appellate Court shall specify clearly the relief granted. The decree in the present case simply says 'plaintiff's claim is awarded.' The Registration Act, section 77, says that the decree must be one directing the document to be registered. Under these circumstances, I think the decree must be amended under section 206 of the Code and not under section 630 of the Code."

The defendants applied to the High Court under its extraordinary jurisdiction, contending that the decree of the Judge in appeal having been superseded by that of the High Court in second appeal, the Judge had no power to pass any order, either under section 206 or section 630 of the Civil Procedure Code; that section 206 was not applicable; that the plaintiff having applied for a review of judgment, the Judge had no power to proceed under section 206, and that the amendment in the decree granted a relief not prayed for in the plaint.

A rule *nisi* was issued, requiring the plaintiff to show cause why the order of the Judge should not be set aside.

Govardhanram M. Tripathi appeared for the applicants (defendants) in support of the rule:—The Judge had no jurisdiction to amend the decree after our second appeal was dismissed by the High Court. The Judge's decree became merged in the decree of the High Court, and the application for review or

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amendment of the decree ought to have been made to the High Court—*Shivlal Kalidas* v. *Jumaklal Nathji Desai*[1].

Next we say that the plaintiffs' application to the Judge was for review. The Judge, however, treated the application as one for the amendment of the decree. The procedure to be adopted under section 206 of the Civil Procedure Code is quite different from that to be adopted under section 630, and the Judge had no power to treat an application for review as an application for amendment. Further, the plaintiffs' suit was for the registration of a mortgage-deed.

The Judge allowed the claim. But the plaint originally did not contain a prayer for an order directing the registration of the document. This was a fresh prayer made in the application for the amendment. The Judge has by the amendment granted to the plaintiffs a relief which was not claimed in the plaint. The Judge had no authority to do so, either by granting a review or the amendment of the decree.

Gokaldas K. Parekh appeared for the opponent (plaintiff) to show cause:—The second appeal was summarily dismissed under section 551 of the Civil Procedure Code. The High Court did not confirm the decree. A decree is drawn when a decree of the lower appellate Court is confirmed in second appeal, but no decree is drawn when a second appeal is dismissed. Therefore, in the present case, the High Court did not draw any decree, and there being no decree of the High Court, the Judge's decree remained intact, and there was no decree in the High Court in which it could become merged.

There being no decree of the High Court, the only tribunal before which we could go for redress was the Judge.

As to the other points which have been urged, they are merely technical, and such as the High Court will not entertain under its extraordinary jurisdiction unless substantial justice is defeated.

Govardhanram M. Tripathi, in reply:—Reading sections 551, 577, 572 and 2 of the Civil Procedure Code together it is clear that an order passed under section 551 is a decree. When the

(1) I. L. R., 18 Bom., 542.

lower appeal Courts dismiss appeals under section 551, the parties come up to this Court in second appeal. But if an order under section 551 be not a decree, there can be no second appeal. It is, therefore, clear that the order dismissing the second appeal in this case under section 551 was a decree of the High Court, in which the decree of the lower appellate Court became merged. Moreover, the dismissal of the appeal includes the confirmation of the decree, and, therefore, the order of dismissal is virtually a decree.

FARRAN, C. J.:—This case differs from those which have been cited to us, in that here the decree of the lower Court has not been confirmed by the High Court. The High Court, acting upon the power given to it by section 551 of the Code of Civil Procedure, dismissed the appeal. The change of language made in 1888 in that section by the Legislature shows, we think, that it was intended that there should be a difference between the results of a dismissal under it and of a confirmation under section 577; as, indeed, we think, there must be. Dismissing an appeal is, we think, refusing to entertain it as in the case of an appeal dismissed as being time-barred. Where an appeal is dismissed under section 551, there is no decree of the High Court which can be executed, and the reasoning in the cases to which we have been referred does not apply.

Mr. Govardhanram argues that the dismissal of the appeal under section 551 is a decree and appealable under section 584. That may be conceded. Still it is clearly not one confirming the decree of the lower Court. It leaves the decree of the lower Court untouched, neither confirmed, nor varied, nor reversed, and it remains, we think, the decree of the lower Court.

The District Court had, therefore, jurisdiction to amend its decree to bring it into accordance with its judgment. The other objections are of such a technical and unsubstantial character that we need not further consider them.

Rule discharged with costs.

Rule discharged.