

B. Manmohan Lal and ors. Vs. B. Raj Kumar Lal and ors.

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Court : Allahabad

Decided On : Oct-31-1945

Reported in : AIR1946All89

Appellant : B. Manmohan Lal and ors.

Respondent : B. Raj Kumar Lal and ors.

Judgement :

Iqbal Ahmad, C.J.

1. This application in revision is directed against an order passed by the Munsif of Jaunpur City directing the amendment of a decree in accordance with the provisions of Section 8, Debt Redemption Act (13 [XIII] of 1940). The facts are not in controversy and are as follows : On 31st January 1933, B. Manmohan Lal and others, the applicants, obtained against Raj Kumar Lal and others, opposite parties, a preliminary decree for sale on the basis of a simple mortgage. The opposite parties on 17th September 1935, filed an application under Section 4 Encumbered Estates Act (25 [xxv] of 1934) and the application was in due course, in pursuance of the provisions of Section 6 of the Act, forwarded by the Collector to a Special Judge. After the presentation of the application under the Encumbered Estates Act, before the Collector the applicants on 19th October 1935, filed an application for the preparation of a final decree for sale and further proceedings on this application were, in view of Section 7 (1)(b), Encumbered Estates Act, stayed. The decree-holder applicants then preferred a claim before

the Special Judge with respect to the amount payable to them under the preliminary decree. While the proceedings under the Encumbered Estates Act were in progress before the Special Judge the Debt Redemption Act was passed and came into force on 1st January 1941. Thereafter on 22nd September 1941, the judgment-debtor opposite parties filed an application before the Munsif, who had passed the preliminary decree, for the amendment of the decree in accordance with Section 8, Debt Redemption Act. The applicant, decree-holders objected to the application mainly on the ground that, as the judgment-debtors had already made an application under the Encumbered Estates Act, they cannot also take advantage of Section 8, Debt Redemption Act, and get the preliminary decree amended. This contention of the decree-holders was overruled by the Munsif and he ordered amendment of the decree. Being aggrieved by this order of the Munsif the decree-holders filed the present application in revision.

2. Even though I am satisfied that the Munsif had, under the circumstances stated above, no jurisdiction to amend the decree, I consider that this Court is not competent to afford relief to the applicant decree-holders in the exercise of its revisional jurisdiction and this application must, therefore, fail. By Section 8, Debt Redemption Act, the Courts specified in that section are vested with jurisdiction to amend a decree to which the Act applies. It is clear, to my mind, that that section is confined in its operation to amendment of decrees under which an agriculturist or a workman is liable to pay a certain amount and has no application to cases where the decree has ceased to exist as such and the liability of the agriculturist or the workman is referable not to a decree but to a claim that is the subject of adjudication. Now the moment a decree-holder prefers before the Special Judge a claim based on the decree obtained by him the decree ceases to exist as such, and the claim of the decree-holder has to be adjudicated upon the conformity with the provisions of the Encumbered Estates Act. This was the view taken in *Sahi Mal Manohar Das v. Mt. Ilfatunnisa Begam* : AIR1941 All293 . In that case it was held that:

It is clear from the scheme of the Encumbered Estates Act that a decree obtained by a creditor ceases to exist as such when he prefers a claim under Section 9 of the Act. The claim has to be adjudicated upon not on the basis of the decree held

by a claimant but on the basis of the loan that he originally advanced to the landlord applicant. That this is so is clear from the provisions of Sections 14 and 15 of the Act. It is to be noted in this connection that every claim preferred by a creditor ultimately becomes the subject of a decree passed by the Special Judge. This shows that a decree obtained by a creditor prior to the initiation of proceedings under the Encumbered Estates Act ceases to be operative as a decree when the debt which merged in that decree becomes the subject of adjudication by the Special Judge. A claim by a creditor based on a decree stands on the same footing as a claim by a creditor on the basis of the loan advanced by him.

3. In the case before us, long before the date of the application under Section 8, Debt Redemption Act, the decree-holder applicants had, as already stated, preferred their claim before the Special Judge with respect to the amount due to them under the preliminary decree for sale. The moment the applicants submitted their claim to the Special Judge the preliminary decree ceased to exist as Such and became the subject of adjudication in proceedings under the Encumbered Estates Act. It follows that on the date that the judgment-debtor opposite parties presented their application under Section 8, the preliminary decree for sale was no longer in existence, and, as such, the munsif had no jurisdiction to amend a decree that was non-existent.

4. Apart from this, an examination of the scheme and provisions of the Encumbered Estates and Debt Redemption Acts does, in my judgment, point to the conclusion that a debtor is not entitled to claim benefit of both the Acts. Section 14, Encumbered Estates Act, makes provision for the examination of claims put forward by creditors and the determination of the amounts due to them. Clause (4)(a) of that section provides that the amount of interest held to be due to a claimant shall not exceed that portion of the principal which may still be found to be due to him and, by Sub-clause

(5) of that section, the Special Judge is enjoined to treat as principal any accumulated interest which has been converted into principal before 1st January 1917, and is further enjoined not to treat as principal any accumulated interest

which has been converted into principal after 31st December 1916. The provisions of the Usurious Loans Act have been made applicable by Clause (4)(b) of the section to proceedings under, the Encumbered Estates Act. The provisions of the Debt Redemption Act for the determination of the amount due to a decree-holder or to a plaintiff in a suit to which that Act applies are practically identical. While Section 8, Debt Redemption Act, makes provision for amendment of decrees passed before the commencement of the Act, Section 9 of that Act provides for 'accounting and determination of the amount due' in a suit to which the Act applies. In both cases the amount due from an agriculturist or a workman has to be determined in accordance with the mandatory provisions of Section 9 of the Act. In determining the amount due from an agriculturist or a workman the Court is enjoined by the proviso to Clause

(1) of Section 9, Debt Redemption Act, to treat as principal any accumulated interest which has been converted into principal before 1st January 1917, and is further enjoined not to treat any such interest which has been converted as aforesaid on or after 1st January 1917. The provisions contained in this proviso are identical with the provisions embodied in Clauses

(5) and

(6) of Section 14, Encumbered Estates Act. Similarly, the provisions contained in Clause

(3) of Section 9, Debt Redemption Act, are similar to the provisions of Clause (4)(a) of Section 14, Encumbered Estates Act. The only substantial difference between Section 14, Encumbered Estates Act, and Section 9, Debt Redemption Act, is that, while by the former the provisions of the Usurious Loans Act have been made applicable to proceedings under that Act, by the latter it is provided that the interest on loan, secured or, unsecured, shall not exceed the rate specified in Sub-section

(2) of Section

9. It is thus manifest that the scheme of Section 14, Encumbered Estates Act, and Section 9, Debt Redemption Act, is practically identical.

5. The question that then arises is, did the Legislature intend that while, on the one hand, the Special Judge was determining [the amount due to a claimant in accordance with the provisions of Section 14, Encumbered Estates Act, parallel proceedings could go on in another Court for determining the amount due to the same claimant or creditor in accordance with the provisions of Sections 8 and 9, Debt Redemption Act? I have no hesitation in answering the question in the negative. The Encumbered Estates Act (25 [XXV] of 1934) and the Agriculturists' Relief Act (27 [XXVII] of 1934) were simultaneously enacted and both the Acts received the assent of the Governor of the United Provinces and of the Governor-General and were published under Section 81, Government of India Act, on identical dates. The professed object of the former Act was to provide for the relief of encumbered estates and the object of the latter Act, as disclosed by its preamble, was to make provision for the relief of agriculturists from indebtedness. Whereas the former Act was designed to give relief to landlords, big or small, the latter Act could be availed of only by agriculturists or landlords of comparatively humble means. We find that the Legislature, while making provision by Section 14, Encumbered Estates Act, for the relief of landlord debtors, enjoined by Clause (4)(c) of that section that the provisions of the U.P. Agriculturists' Relief Act shall not be applicable to proceedings under the Encumbered Estates Act. By this provision it was put beyond doubt that a landlord who was an agriculturist within the meaning of the Agriculturists' Relief Act could not simultaneously claim the benefit of both the Acts. The Debt Redemption Act was passed long after the Encumbered Estates Act and, even though its preamble discloses that it was enacted with a view to provide for further relief from indebtedness to agriculturists and workmen, Clause (17) of Section 2 of that Act does, in my opinion, put it beyond doubt that the benefit of that Act could not be claimed by a landlord who had applied under the Encumbered Estates Act. That clause runs as follows:

'suit to which this Act applies' means any suit or proceeding relating to a loan, but does not include proceedings under the provisions of the U.P. Encumbered Estates Act, 1934;

6. In view of this provision it is clear that if a creditor prefers a claim with respect to an undecreed debt before a Special Judge against a landlord, who is either an agriculturist or a workman within the meaning of the Debt Redemption Act, the debtor cannot be given the benefit of Section 9, Debt Redemption Act. It would, therefore, be anomalous to hold that if the claim of the creditor before the special Judge is based upon a decree passed in his favour, the debtor can get the benefit of Sections 8 and. 9, Debt Redemption Act. There could obviously be no reason to differentiate between a decreed and undecreed debt and if it was the intention of the Legislature to allow an agriculturist or a workman to get the benefit of both the Acts, the proceedings under the Encumbered Estates Act would not have been exempted from the operation of the Debt Redemption Act. To put it another way: If the Legislature had intended that an agriculturist or a workman could claim the benefit of both the Acts, it would not have by Section 2(17), Debt Redemption Act, excluded the proceedings under the Encumbered Estates Act from the purview of the Debt Redemption Act. I, therefore, hold that the Munsif was wrong in ordering the amendment of the decree, but, as stated at the inception of this judgment, I consider that this application in revision is not maintain, able and must accordingly be dismissed.

7. Section 115, Civil P.C., enumerates the conditions that must be satisfied before revisional powers can be exercised by the High Court and one of the conditions is that such power can be exercised only in cases in which 'no appeal lies thereto.' It is argued by the learned Counsel for the opposite parties that the amended decree passed by the Munsif was appealable to the District Judge, and a second appeal against the appellate decision of the District Judge could have been preferred to this Court, and, as such, the revisional jurisdiction of this Court is barred. The learned Counsel for the applicants, on the other hand, controverts the position taken by the counsel for the opposite parties on two grounds. In-the first place he maintains that neither the order passed by the Munsif directing the amendment of the decree nor the amended decree was appealable and, in the second place, he contends that the revisional jurisdiction of this Court is only barred when an appeal lies direct to this Court, and not in cases where a second appeal can eventually be preferred to this Court. The contention of the learned Counsel for the opposite parties is, in my judgment, well founded and must prevail. It has been held in a

series of cases that the word 'appeal' in Section 115, Civil P.C., is not restricted to a first appeal but also includes a second appeal and, therefore, if a second appeal lies to the High Court from the case sought to be revised, the High Court has no jurisdiction to interfere in revision. I do not desire to encumber my judgment by a detailed reference to these cases which will be found noted at p. 1036 of Vol. 1 of Chitaley's Code of Civil Procedure, Edn. 3. I may, however, make reference to two cases decided by this Court. One of these cases is reported in Beni Madho Ram v. Mahadeo Pandey : AIR1930 All604 . It was held in that case that there is no ground for restricting the scope of the words 'in which no appeal lies thereto' to cases where no appeal lies direct to this Court. It was further held in that case that

so long as the party has a right to come up to the High Court by way of an appeal and has failed to avail himself of that opportunity by first going up to the District Judge and then coming up to the High Court, he cannot ask the High Court to interfere in revision.

The second case is a Full Bench decision and is reported in Lila v. Mahange : AIR1931 All632 . It was observed in that case that

as a matter of practice it may be conceded that ordinarily the High Court would not interfere if another convenient remedy is open to an applicant, particularly when that remedy is by way of appeal to a lower Court.

8. I am aware that the contrary opinion was expressed in some cases in which it was held that, in view of the word 'thereto' used in Section 115, the revisional jurisdiction is ousted only if an appeal lies direct to the High Court against the decree or order sought to be revised. I, however, with great respect, am unable to subscribe to this view. If it was the intention of the Legislature to oust the revisional jurisdiction of a High Court only in cases where the order or the decree sought to be revised was directly appealable to that Court, nothing was easier than to say so in Section 115. The words 'no appeal lies thereto' are, however, words of general import and there is nothing in the section to confine the operation of those words only to first appeals and to exclude second appeals from their purview. Further, on principle, I am unable to discover any ground whatsoever for barring the revisional jurisdiction where an appeal lay direct to the High Court and for allowing such

jurisdiction where the matter could be brought by means of a second appeal to the High Court. To adopt the narrower interpretation, put in some of the cases, would be to give an option to a party aggrieved from a decree or an order against which an appeal lies to the District Judge to short-circuit that Court and to come in revision direct to the High Court and, for this, I can discover no justification in the Code. The narrower construction would, at times, lead to great confusion which can better be imagined than described. Take for instance a case in which a suit, which is valued at less than Rs. 5000, is partly decreed and partly dismissed by the trial Court with the result that both the plaintiff and the defendant are dissatisfied with the decree of that Court. If the contention of the applicant's counsel is accepted, it would be open to one of the parties to appeal to the District Judge and to the other party to file an application in revision to this Court and thus this Court and the District Judge will both be exercising simultaneous jurisdiction, one revisional and the other appellate, with respect to the same cause. The confusion would become worse confounded if the two Courts take views as regards the merits of the case. In the absence of clear and express words in the section I am reluctant to adopt a construction which is likely to result in complexity rather than simplicity of procedure and which is calculated to encourage litigants by waiving the right of appeal given to them by the Code, to flood this Court by applications in revision.

9. I now proceed to consider the question whether the amended decree passed by the Munsif was appealable to the District Judge. In my opinion it was. It has been held in a number of cases that an appeal lies against an amended decree, vide *Mrs. Alice Maud v. J.C. Galstaun* : AIR1927 Cal114 , *Vishwanathan Chetty v. Ramanathan Chetty* ('01) 24 Mad. 646 and *Arunachalam Chettiar v. Govindeswami Goundan* ('42) 23 A.I.R. 1942 Mad 519. In the last two cases the Madras High Court, while holding that an appeal lay against the amended decree, also ruled, that an application in revision either against an order directing amendment of the decree or the amended decree was not maintainable. By Section 8, Debt Redemption Act, the Courts specified in that section are enjoined to amend the decree if the conditions specified in that section are satisfied. Section 24, Debt Redemption Act, provides that

the provisions of the Code of Civil Procedure, 1908, save in so far as they are inconsistent with the provisions of this Act, shall apply to all proceedings under this Act.

Section 96, Civil P.C., allows appeals from original decrees and inter alia, provides that 'an appeal shall lie from every decree passed by any Court exercising original jurisdiction.' Now, it cannot be disputed that the Courts referred to in Section 8, Debt Redemption Act, exercise original jurisdiction in amending a decree in accordance with the provisions of that section and as in consequence of the amendment, the original decree is substituted by the amended decree, there is no escape from the conclusion that the amended decree can be appealed against. I can discover no provision in the Debt Redemption Act inconsistent with the provisions of Section 96 of the Code, and, as such, I hold that part 7 of the Code which deals with appeals from original decrees applies to proceedings under the Debt Redemption Act.

10. Reliance was, however, placed on behalf of the applicants on Clause (2) of Section 8, Debt Redemption Act, which provides that 'a decree amended under the provisions of Sub-section (1) shall be deemed to bear the date of the original decree.' It was suggested that, in view of this provision, a party aggrieved by the amended decree would find it impossible to appeal against the amended decree as the limitation to file an appeal from the date of the original decree would, in most cases, have expired. It was, therefore, maintained that the Legislature could not have intended to allow a right of appeal against a decree amended under Section 8 and it was suggested that Clause (2) of Section 8 was repugnant to Section 96 of the Code. I am not impressed by this argument. All that Clause (2) provides is that the amended decree 'shall be deemed to bear the date of the original decree' and not that the amended decree shall actually bear the date of the original decree. It is inevitable that the date appended to the amended decree will be the date on which the original decree is amended and for the purposes of limitation governing appeals, the actual date of the decree and not the date that the decree is 'deemed to bear' is the relevant date. To put the matter in another way. In view of the provisions of Clause (2) of Section 8 the notional date of the amended decree is the date of the original decree, but in fact the actual date of the

amended decree will be the date on which the decree was amended, and the limitation for appeal will be computed from the actual date that the amended decree bears. A party aggrieved from the amended decree can, therefore, appeal against the decree within the period of limitation allowed by the limitation Act. I, therefore, hold that the amended decree passed by the Munsif in the present case was appealable to the District Judge and the present application in revision is accordingly incompetent.

11. Great reliance was however placed by the counsel for the applicants on the Full Bench decisions of this Court in *Surta v. Ganga* ('85) 7 All. 875 (F.B.) and *Raghunath Das v. Raj Kumar* ('85) 7 All. 876 (F.B.). In both these cases the view of Mahmood J. who dissented from Oldfield J. was accepted. The view taken by Mahmood J. was that an order passed under Section 206, Civil P.C. of 1882, (which corresponds to Section 152 of the Code of 1908), constituted an adjudication separate from that concluded by a decree and that the order directing amendment of the decree was a separate adjudication and could be revised by the High Court. Oldfield J. on the other hand, was of the view that orders passed under Section 206 of the Code of 1882 could not be made the subject of revision by the High Court inasmuch as the amended decree could itself be appealed against. I may, with great respect, point out that Mahmood J. did not consider the question as to whether an appeal could be preferred against the amended decree. If the amended decree was appealable, there could be no question of the order directing amendment being revised by the High Court inasmuch as the order itself would be incorporated in the amended decree. Be that as it may, I am not in the present case, concerned with the question whether an order passed by a Court under Section 152, Civil P.C., can be made the subject of an application in revision to the High Court or whether the only remedy of the party aggrieved by such an order is to file an appeal against the amended decree. The question before me is whether a decree amended under Section 8, Debt Redemption Act, is appealable and I have already given my reasons for holding that it is. For the reasons given above I would dismiss this application in revision but in the circumstances of the present case, I would direct the parties to bear their own costs in this Court.

12. Before parting with this case, I must take note of the fact that so far there was no pronouncement by this Court on the question as to whether a decree amended under Section 8 by a Court other than an execution Court is appealable, and, therefore, it is manifest that the applicants preferred this application in revision to this Court in the bona fide belief that they could not appeal against the amended decree. The time for filing an appeal against the decree has long expired, but it appears to me that, in the circumstances, the applicants can still file an appeal in the Court of the District Judge along with an application under Section 5, Limitation Act.

Allsop, J.

13. There are three questions which arise in this application for revision. The first is whether a judgment-debtor who has made an application under Section 4, Encumbered Estates Act, is entitled to apply to the civil Court, which has passed a decree against him or to which the execution of a decree has been transferred, for the amendment of the decree under the provisions of Section 8, U.P. Debt Redemption Act, 1940. The provisions of Section 8 are that an agriculturist may apply in this manner if he is liable to pay the amount due under the decree. In my judgment a person who has made an application under Section 4, Encumbered Estates Act, is not liable to pay any amount due under a decree as such. He may be liable, in one sense, to pay some part of the amount due under the decree, but this liability does not arise under the decree and he is not necessarily liable to pay the whole amount due. His liability cannot be enforced until the Special Judge passes another decree on the basis of a claim made against him by a creditor. I would, therefore, hold that a person who has made an application under Section 4, Encumbered Estates Act, is not entitled to make another application under Section 8, U.P. Debt Redemption Act, so long as the proceedings under the Encumbered Estates Act continue.

14. His Lordship the Chief Justice whose judgment I have had the advantage of seeing has given one very good reason against the contrary view. If the creditor had not obtained a decree but had gone directly to the Special Judge to enforce his claim, the debtor, that is the claimant under the Encumbered Estates Act,

would not have been entitled to invoke the provisions of Section 8, U.P. Debt Redemption Act, 1940. There is no reason why the creditor should be in a worse position because he has obtained a decree. The second question is whether an appeal lies against a decree as amended under Section 8, U.P. Debt Redemption Act, or against the direction of the Judge that the decree should be amended in accordance with the provisions of Section 9 of the Act. There seems to be no reason why the Legislature should not have allowed an appeal against a direction which might involve a considerable sum of money. In the ordinary course under the provisions of the Code of Civil Procedure there would not be any amended decree except in accordance with the provisions of Section 152 of the Code and an amendment under that section does not involve any adjudication between the parties. The section allows merely the correction of clerical or arithmetical mistakes or errors arising from any accidental slip or omission. It is obvious that the section cannot apply unless there have been obvious mistakes or errors of this kind.

15. It has been urged that an appeal against an amended decree under Section 8, Debt Redemption Act, would, for all practical purposes, be barred because under Sub-section (2) of that section the amended decree shall be deemed to bear the date of the original decree and the law of limitation would prevent the institution of an appeal. I am not satisfied that this would necessarily be so. In the first place, there are the provisions of Section 5, Limitation Act, and, in the second place, the appeal could not be filed till the copy of the amended decree had been obtained and that could not be obtained till the decree was actually drawn up so that the appellant would probably be entitled to deduct from the period of limitation the whole period up to the time when the amended decree was reduced to writing. There would be nothing to prevent him from making an application for the copy of the amended decree as soon as he was aware of the terms of the judgment on which it was based and he obviously could not get a copy till the decree was ready. I am using the term 'judgment' in its meaning as defined in the Code of Civil Procedure. A judgment means the statement given by the Judge of the grounds of a decree or order. As a matter of convenience, the term 'judgment' is often loosely used for the statement given by the Judge of the grounds of a decree only and the term 'order' is incorrectly used for the statement given by the Judge of the grounds

of any other direction. A decree under the Code means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit, but it does not include any adjudication from which, an appeal lies as an appeal from an order, or any order of dismissal for default. An order means the formal expression of any decision of a civil Court which is not a decree, though the term is frequently used as meaning the statement given by the Judge of the grounds of any direction which is not, on the face of it, a decree. So that there may be a distinction between the meaning of the term 'order' as used in that sense and an order within the meaning of the Code of Civil Procedure, the term 'formal order' is often substituted for the latter. I think it is necessary to point out that these expressions, judgment, decree and order, are frequently used in somewhat loose and incorrect way for convenience of expression. Under Section 96, Civil P.C., an appeal lies from every decree. In Section 104, provision is made for appeals from orders, but the orders to which this section refers are orders under various provisions of the Code of Civil Procedure itself or the rules made under the Code. Looking at the definitions it seems to me that a direction by a Judge that a decree should be amended under the provisions of Sections 8 and 9, U.P. Debt Redemption Act, is, properly speaking, a decree and the reasons given for the amendment and the manner in which it would be made is a judgment. There can be no doubt that it is a matter of controversy in the suit itself in which the amended decree is to be passed what sum of money is due from the defendant to the plaintiff. When a Court amends a decree, it conclusively determines the rights of the parties with regard, to this matter. It seems to me that there should be three stages. The Court should deliver a judgment saying how the decree is to be amended, that judgment should then lead to a formal expression of its terms which would amount to a decree and the original decree should be amended in accordance with the decree directing the amendment. Against the decree directing the amendment there should be an appeal and no difficulties in the matter of limitation would then arise. A correction under Section 152, Civil P.C., could not be a decree because there is no adjudication properly so called between the parties. For the purpose of these proceedings, however, it is not necessary to express any definite opinion (upon this point. I am satisfied that an

appeal must lie either against the amended decree itself or against the direction that the decree should be amended.

16. The third question is whether this Court can interfere in revision under the provisions of Section 115, Civil P.C., with an order amending a decree under the provisions of Section 8, Debt Redemption Act. It is clear that this Court cannot interfere with a decree under that section if an appeal to it lies directly, but it has been urged that the Court can interfere if the question in dispute can come before it only in second appeal. I do not think that there is any force in this contention. Section 115 lays down that the High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which, no appeal lies thereto. The section does not say that the Court can call for an order or decree against which an appeal lies to it. If the case is such that a second appeal may lie to the Court, I do not think that the Court can interfere in exercise of its powers of revision, but the matter is not of any importance because I do not think that the Court in exercise of its discretion should interfere even if it is entitled to do so. The general principle is that every question at issue should be decided by the Court of the lowest grade competent to decide it. I may refer to Section 15, Civil P.C. It would be against this principle for a High Court to interfere in any matter when it is open to the parties to appeal to a lower Court. In view of my conclusions I would hold that the Court which amended the decree had no jurisdiction to do so but that this Court should not interfere in exercise of its revisional powers. For this reason I would dismiss the application.

Verma, J.

17. To the question which arises on the merits, my answer is that the debtors, opposite parties in this revision case were not entitled to apply for an amendment of the decree under Section 8, Debt Redemption Act, and that therefore the Court below had no jurisdiction to entertain it, much less to allow it. My Lord the Chief Justice and my brothers Allsop and Malik have dealt with this question at length and I do not find it necessary to add anything to what they have said on this point. With regard to the preliminary objection, my opinion is that there is no force in it and that this is a case in which not only has this Court got jurisdiction to entertain

the petition for revision but, further, that, in view of all the circumstances, the order which this Court should think fit to make is that the petition for revision be allowed and the application filed by the debtors, opposite parties, be dismissed with costs. My brother Malik has dealt with the matter exhaustively and, as I agree with what he has said in his judgment, it is not necessary for me to go into it at great length. A question like this falls to be considered under two heads, (1) whether a revision lies at all, in other words, whether the Court has got jurisdiction to entertain a petition for revision against the decision in question, and (2) whether, even if the Court has jurisdiction to entertain a petition for revision it should, in the circumstances of the particular case, exercise its discretion in favour of the petitioner for revision and should allow the petition. These are two different questions and have to be considered separately.

18. With regard to the first head although, as I have said above, I am in agreement with the judgment of my brother Malik, I shall in order to be able to deal with the question concisely, assume that the word 'appeal,' as used in Section 115, Civil P.C., is comprehensive enough to include a second appeal. Even on that assumption, however, the question remains whether there is here an adjudication by the Court below which could ultimately lead to a second appeal to this Court. I agree with my brother Malik for the reasons given by him, that the adjudication or judgment which we have before us is not one which has given rise to a 'decree' but that it is one which has given rise only to an 'order.' As it is not an order from which an appeal is provided by any statute, no appeal lies from it. My brother Allsop finds that it is not necessary to express any definite opinion upon this point and has proceeded upon the footing that an appeal must lie either against the amended decree itself or against the direction that the decree should be amended. My brother Yorke also ultimately decides the matter upon the footing that the petition for revision should not be entertained, whether or no it be held that the petition can be entertained. In these circumstances, I do not consider it necessary to discuss this part of the case any further.

19. Coming now to the second head here again I find myself in agreement with my brother Malik. The argument on this part of the case is not that the adjudication granting the application of the debtors and directing that the decree be amended is

itself appealable, but that another remedy, in the shape of an appeal to the District Judge from the amended decree, is open to the creditors, petitioners for revision before us and that, therefore, this Court should not entertain the revision, in other words, that the order which it should think fit to make is that the petition for revision be dismissed. It will be noticed that this is not an argument that an appeal lay to this Court in the case which arose on the application for amendment being filed, but that an appeal lay, or lies, in another case, namely, the original suit. It is true that it is the practice of this Court that it does not ordinarily interfere in the exercise of its revisional jurisdiction when another remedy is open to the petitioner for revision. That does not, however, mean that this Court should never entertain a revision when another remedy is open. Circumstances alter cases. In *Lila v. Mahange* : AIR1931 All632 the Full Bench observed as follows:

Section 115 is no doubt discretionary and therefore it is open to the High Court to decline to interfere in particular cases. As a matter of practice it may be conceded that ordinarily the High Court would not interfere if another convenient remedy is open to an applicant, particularly when that remedy is by way of appeal to a lower Court. But it cannot be laid down as a general proposition that the High Court has no power of interference at all, or should not interfere, where there is another remedy by way of a suit open to the applicant. The remedy by way of separate suit would, involve protracted litigation through several Courts and is not always a convenient remedy when more effective and speedy remedy is available. There is no justification for restricting the power conferred upon the High Court under Section 115 by laying down that no revision should be entertained when a remedy by suit lies. Each case might be considered on its own merits and, if the Court below has acted without jurisdiction or with material irregularity and the applicant has been seriously prejudiced and interference is called for in the interest of justice, there is no reason why we should drive the applicant to a more circuitous remedy by way of a separate suit.

If the words 'appeal accompanied by an application under Section 5, Limitation Act' are substituted for the word 'suit' in the pas-sago just quoted, it becomes exactly applicable to the case before us. The real principle laid down by the Pull Bench is that each case must be considered on its own merits. As a matter of fact,

it appears to me that a suit is a far more reliable remedy than an appeal in which it is necessary for the appellant to apply under Section 5, Limitation Act, particularly where - as it would be in the present case - the delay in filing the appeal is considerable.

20. The question then arises whether interference is called for in the interest of justice in the present case. The petitioners for revision, or their predecessors, brought a suit on their mortgage as far back as the year 1931. Preliminary decree was passed on 31st January 1933. In due course they applied for the preparation of a final decree on 19th October 1935. That application would, in due course, have been granted and a final decree would have been passed if the debtors had not, in the meantime, on 17th September 1935, filed an application under Section 4, U.P. Encumbered Estates Act (25 [xxv] of 1934). In consequence of the provisions laid down in Section 7, Encumbered Estates Act, all proceedings in connexion with the application for the preparation of a final decree had to be stayed. The Encumbered Estates Act proceedings, initiated by the application of 17th September 1935, are still pending. The application for amendment of the decree under Section 8, U.P. Debt Redemption Act, was filed on 22nd September 1941. The judgment of the Court below granting that application, that is, the adjudication against which this petition for revision has been filed in this Court, was pronounced on 5th November 1941. The petitioners filed this petition for revision in this Court in January 1942. It has been found by this Court that the questions involved in the case were of considerable importance and complexity with the result that, after having been successively before a Bench of two Judges and a Bench of three Judges, it has been laid before a Bench of five Judges. It is apparent, therefore, that the matter was not free from doubt and difficulty. As has been observed by my Lord the Chief Justice, it is manifest, in these circumstances, that the petitioners preferred this petition for revision to this Court in the bona fide belief that a remedy by way of an appeal was not open to them. This is, thus, not one of those cases in which the petitioner for revision, knowing that a remedy in the shape of an appeal to the District Judge was open to him, deliberately refrains from going to that Court and files a petition for revision in this Court as a short cut. In these circumstances, it appears to me that it would not be right on the part of this Court now to drive the petitioners for revision to the other

remedy which, it is suggested, exists, namely, an appeal in the Court of the District Judge with an application under Section 5, Limitation Act. In my judgment it is the duty of this Court in the interest of justice to entertain this petition for revision and to set aside the order in question.

21. I may mention here that in my opinion the words 'in which no appeal lies thereto' in Section 115 of the Code must be read with the words that precede, them. The result is that what Section 115 lays down is this : '...may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto.' The 'case' which the Court below has, in my opinion, decided is the case which came into being in consequence of the application for amendment under Section 8, Debt Redemption Act, filed by the debtors in the Court below. The question that then arises is whether that was a case in which an appeal lay to this Court, proceeding, of course, as I have done above, on the assumption that the word 'appeal' is comprehensive enough to include a second appeal. If the view, that the adjudication or judgment against which this petition for revision has been filed is not one which could result in a 'decree' is correct, as I hold it to be, no question of any second appeal ultimately lying to this Court can arise, and the jurisdiction of this Court to entertain this petition for revision is not then barred by the conditions laid down in Section 115. The only question which, in my opinion, arises in this case is whether or no it is one of those cases in which this Court should exercise its discretion in favour of the petitioner for revision. As I have stated above, in my opinion this is one of those cases. So far as the Full Bench cases in *Raghunath Das v. Raj Kumar* ('85) 7 All. 876 (F.B.) are concerned, it appears to me that although the amendment in those cases had been made under the section which corresponded to Section 152 of the present Code, the principle deducible from the decisions in those cases is that the mere fact that another remedy, namely, an appeal from amended decree, is open to the petitioner for revision is not by itself a sufficient ground for declining to entertain the revision. That was the ground on which Oldfield J. had held that the petition for revision should not be entertained and the Full Bench did not agree with him. For the reasons given above, I would allow this petition for revision and set aside the order of the Court below with costs in both Courts.

Yorke, J.

22. This case was first referred by a Bench of two Judges to a larger Bench for the decision of the question whether a landlord who has made an application under the Encumbered Estates Act, can also take advantage of Section 8, Debt Redemption Act, and get a decree passed against himself amended and it may be added get the benefit of this reduction in the proceedings under the Encumbered Estates Act. When the matter came before a Bench of three Judges the question arose whether an application in revision against the order of the trial Court, the Munsif of Jaunpur City making such an amendment was entertain able by this Court.

23. The matter has arisen in this way. The present applicants instituted Suit No. 555 of 1931 for recovery of the amount due on foot of three mortgages. In that suit a preliminary decree was passed on 3rd January 1933. The matter was taken in appeal but on 3rd July 1934 there was a compromise in the appeal with the result that the preliminary decree 'became a decree on the basis of a compromise. On 17th September 1935 the judgment-debtor, Raj Kumar Lal, made an application under the Encumbered Estates Act and that application was on 26th September sent for disposal to the Special Judge. Proceedings under the Encumbered Estates Act are not yet complete but it is stated that simple money decrees have been passed in respect of all the claims of the creditors except the claim of the decree-holders of Suit No. 555 of 1931.

24. On 22nd September 1941 an application was made by the judgment-debtor under Section 8, Debt Redemption Act, for amendment of the preliminary decree of 3rd January 1933 as settled by the compromise in the appeal on 3rd July 1934. The application for amendment was opposed but the learned Munsif relying on *Ranbir Prasad v. Sheobaran* : AIR1939 All619 held that there was no bar to the amendment of the decree by the application of the provisions of the Debt Redemption Act, taking the view that the point was not really covered by the decision in *Sahi Mal Manohar Das v. Mt. Itifatunnisa Begam* : AIR1941 All293 . The learned Munsif passed orders on 5th November 1941 and the present application appears to have been filed in this Court on 12th January 1942 the

paper-book also shows the date 5th March 1942.

25. The first question which has arisen for decision is whether the present application in revision is entertainable or whether the proper course for the applicants was to have filed an appeal in the Court to which an appeal lay from the decree of the trial Court. The question whether the present application in revision is entertainable has been argued by learned Counsel at some length and the main contention on behalf of the opposite party judgment-debtor is that this amendment made under Section 8, Debt Redemption Act, is analogous to an amendment under Section 152, Civil P.C. It seems to me, however, that all arguments based on the view that an amendment made under Section 8, Debt Redemption Act, (or for the matter of that under Section 5, Agriculturists' Relief Act,) stands on the same footing as an amendment of a decree under Section 152, Civil P.C., are entirely fallacious. Section 152, Civil P.C., provides as follows:

Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

It has no doubt been held, by this Court in *Raghunath Das v. Raj Kumar* ('85) 7 All. 876 (F.B.) and *Surta v. Ganga* ('85) 7 All. 875 (F.B.) that no appeal lies against a decree which has been amended under what is not Section 152, Civil P.C., and that therefore an application in revision can be entertained against the order amending the decree. Incidentally I may note that that view was not taken unanimously. Be that as it may, the whole essence of an amendment under Section 152, Civil P.C., is that it is an amendment made for the correction of clerical or arithmetical mistakes or errors arising from an accidental slip or omission, and it is certainly arguable that where a defendant, for example, finds that by accident a decree has been given against him for Rs. 5000 whereas the whole trend of the judgment was that a decree would be given against him for Rs. 15,000, he is not entitled to sit back and not appeal against the decree in its erroneous form and yet subsequently claim the right to appeal when by amendment it is put into the form which it was obvious that it was always intended to take. But that is not the position which arises upon an application for

amendment under Section 5, Agriculturists' Relief Act, or Section 8, Debt Redemption Act. An application under either of these sections gives rise at once to an issue of fact as to whether the defendant judgment-debtor is or is not an agriculturist (or even a workman) and it further gives rise to an issue of fact as to what is the proper amount of the debt as scaled down under the provisions of the Debt Redemption Act. The decree which is thus produced by the amendment cannot easily be said to be the same decree which was originally passed but is, in my judgment a fresh decree and therefore a decree against which an appeal would lie under Section 96(1), Civil P.C. Section 96(1) provides as follows:

Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court.

By definition a 'decree' under Section 2(2) of the same Code means

the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 47 or Section 144, but shall not include: (a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default.

It seems to me that even though there has already been a decree in the suit nonetheless an application for amendment of a decree by application of the provisions of the Debt Redemption Act, results in a fresh decree conclusively determining the rights of the parties with regard to all or any of the matters in controversy in the suit and therefore comes within the scope of Section 96 of the Code. It follows that the decree which results from a successful application under Section 8, Debt Redemption Act, is appealable just as much as was the decree originally passed, in the present case some eight years earlier.

26. In this connexion I am not much impressed by argument based on the provisions of Sub-section (2) of Section 8, Debt Redemption Act, which provides that a decree amended under the provisions of Sub-section (1) shall be deemed to bear the date of the original decree. Such a provision was obviously necessary because without such provision a doubt would exist as to how future interest could be calculated under an amended decree, and too much should not be read into it. I do not think it is necessary to discuss at any length the question whether in these circumstances a revision application is entertainable in this Court, as this Court has fairly consistently taken the view that where an appeal is entertainable, whether by this Court or an inferior Court, from the decree in respect of 'which an application in revision is filed in this Court, the application should not be [entertained, whether or no it be held that such an application can be entertained.

27. The second point on which we have listened to arguments is the one which was originally referred to a larger Bench, namely, whether a landlord who has made an application under the Encumbered Estates Act can also take advantage of Section 8, Debt Redemption Act, and get a decree passed against himself amended? For myself, I am inclined to take the view that in the light of the wording of Section 8, Debt Redemption Act, there is really nothing to prevent a landlord from getting a decree amended under Section 8, Debt Redemption Act, and the real question is whether by so doing, he can derive any advantage. Sub-section (1) of Section 8, Debt Redemption Act, begins with the words:

Notwithstanding the provisions of any decree or of any law for the time being in force, an agriculturist or a workman liable to pay the amount due under a decree to which this Act applies passed before the commencement of this Act, may apply to the civil Court which passed the decree or to which the execution of the decree has been transferred, for amendment of the decree by reduction according to the provisions of this Act of the amount due under it....

The opening words evidently release such an application from the effect of any prior legislation which might seem otherwise to prevent such an application being made or, if made, from being allowed. In the light of these words, such an application could not be held to be barred by the provisions of Section 7,

Encumbered Estates Act. On the other hand, two questions will arise, namely, (1) after the application has been made under the Encumbered Estates Act, is the applicant an agriculturist liable to pay the amount under a decree to which this Act applies? (2) whether such an amendment, if made, can have any effect on the disposal of the claim made by the creditor under the Encumbered Estates Act?

28. As regards the first of these two questions it has been held by a Bench of this Court in *Sahi Mal Manohar Das v. Mt. Ilfatunnisa Begam* : AIR1941 All293 that

in proceedings under the Encumbered Estates Act, it is competent to a Court to reduce the rate of interest even though the loan was incurred prior to the passing of the Usurious Loans Act (a conclusion, which would follow from the specific provision contained in Section 14, Encumbered Estates Act).

It was further held that

a decree obtained by a creditor ceases to exist as such when he prefers a claim under Section 9, Encumbered Estates Act. The claim has to be adjudicated not upon the basis of the decree held by the claimant but upon the basis of the loan which he originally advanced to the landlord applicant. That this is so is clear from the provisions of Sections 14 and 15 of the Act.

In the course of the judgment it was remarked:

It is to be noted in this connexion that every claim preferred by a creditor ultimately becomes the subject of a decree passed by the Special Judge. This shows that a decree obtained by a creditor prior to the initiation of proceedings under the Encumbered Estates Act ceases to be operative as a decree when the debt which emerged in that decree becomes the subject of adjudication by the Special Judge. A claim by a creditor based on a decree stands on the same footing as a claim by a creditor on the basis of the loan advanced by him.

It has been contended that in the light of this decision after an application has been made under the Encumbered Estates Act, it is no longer open to the landlord debtor to say with reference to a decree included in the list of debts in the Court of the Special Judge that he is an agriculturist 'liable to pay the amount due under a

decree to which this Act (the Debt Redemption Act) applies.' With respect I am inclined to think that the statement in *Sahi Mal Manohar Das v. Mt. Itifatunnisa Begam* : AIR1941 All293 that a decree obtained by a creditor ceases to exist as such when he prefers a claim under Section 9, Encumbered Estates Act, goes a little further than is strictly justifiable. In the light of the provisions of the Encumbered Estates Act itself, such a decree can hardly be said to have ceased to exist as such when it may resume its existence as it were in case, on some ground or other, the application is dismissed by the Special Judge or the proceedings are quashed under the provisions of Section 20, Encumbered Estates Act. It follows that the effect of the Encumbered Estates Act proceedings is rather that a decree becomes suspended and liable to cease to exist than that it actually does immediately cease to exist upon the preferring of a claim under Section 9, Encumbered Estates Act. It is true that even upon this view the debtor is not immediately liable to pay the amount due under the decree, nor is the amount immediately payable. But it does not seem to me that the very general words contained in the section should be qualified by the addition of any such words. The amount is due under the decree, although obviously not immediately payable as the decree is under suspension, and the agriculturist is liable to pay the amount although the liability cannot at the moment be enforced. In my judgment it does not follow from the fact that a decree is under suspension that it is not open to the judgment-debtor to make an application under Section 8, Debt Redemption Act, and to get such amendment of the decree as may be permissible under that section.

29. As regards the second question, I am clearly of opinion that in view of the provisions of Section 14, Encumbered Estates Act, and of Sub-section (17) of Section 2, Debt Redemption Act, an amendment of a decree made under the provisions of the Debt Redemption Act is really nugatory and without effect so far as the proceedings under the Encumbered Estates Act are concerned because once an application has been made under the Encumbered Estates Act the amount due at the date of the application under the Encumbered Estates Act is to be determined by the Special Judge in accordance with the provisions of Section 14 of that Act. I would, therefore, hold that the present application in revision is not entertainable.

Malik, J.

30. This revision has been filed under Section 115, Civil P.C., against an order dated 5th November 1941, passed by the learned City Munsif of Jaunpur under Section 8, U.P. Debt Redemption Act (13 [XIII] of 1940) directing the amendment of the preliminary decree in Suit No. 555 of 1931. The suit in which the above preliminary decree was passed had been filed by Sita Ram and others against Raj Kumar Lal and others for realisation of money due under three mortgages, dated 8th November 1923, 17th May 1924 and 19th November 1925, and for the relief that the mortgaged property be sold in case the decretal amount was not paid. The suit was decreed on 31st January 1933, and a preliminary decree in favour of the mortgagee decree-holders was passed.

31. An Act, known as the U.P. Encumbered Estates Act (25 [XXV] of 1934), was passed in 1934 to provide for relief of encumbered estates in the United Provinces and it came into force on 30th April 1935. The Judgment-debtors, who claimed to be landlords as defined in that Act, put in an application on 17th September 1935, praying that the provisions of the Act be applied to them. The application was sent by the Collector to the Special Judge on 29th May 1936, and we understand the proceedings under the Act are still pending in that Court. Before the Collector had sent the application to the Special Judge, the decree-holders on 19th October 1935, had applied for preparation of the final decree for sale. The proceedings for preparation of the final decree had, however, to be stayed in accordance with the provisions of Section 7, Encumbered Estates Act, after the order dated 29th May 1936, passed by the Collector under Section 6 of the Act.

32. In the year 1940 an Act, known as the U.P. Debt Redemption Act (13 [XIII] of 1940) was passed which came into force on 1st January 1941. Section 8 of this Act provides that, notwithstanding the provisions of any decree or of any law for the time being in force, an agriculturist liable to pay the amount due under a decree to which this Act applied, passed before the commencement of this Act, could have the decree amended by reduction of interest according to the provisions of this Act. On 22nd September 1941 the judgment-debtors applied that the decree passed in Suit No. 555 of 1931 be thus amended and the amount

claimed from them be reduced. The decree-holders filed objections to this application on 1st November 1941. The learned Munsif, however, disallowed the objections and directed that the decree be amended. It is against that order that this revision has been filed. It is not denied that the judgment-debtors were agriculturists and would have been entitled to the benefit of the U.P. Debt Redemption Act if the decree passed in Suit No. 555 of 1931 had not become the subject-matter of a claim under the Encumbered Estates Act.

33. It may be necessary for the decision of this question to consider the relevant provisions of the Encumbered Estates Act and the Debt Redemption Act. The Encumbered Estates Act was passed, as I have already said, in the year 1934 as Act No. 25 [xxv] of 1934. About the same time another Act, known as the U.P. Agriculturists' Relief Act (27 [xxvn] of 1934), was passed. Under this latter Act 'agriculturists' who did not pay land revenue or local cess beyond a certain limit or were 'workmen' as defined in the Act were entitled to substantial reduction in interest and to the benefit of being allowed to pay their debts by instalments. Under the Encumbered Estates Act, there was no limit placed on the amount of land revenue that was to be paid by a 'landlord', and any landlord, which term included a proprietor of a mahal or of a share or of interest in a mahal, an under proprietor or a sub proprietor and a proprietor of specific plots, could apply for the protection of his estate. The proceedings were, more or less, in the nature of insolvency proceedings. The landlord had to give a list of his debts and a list of his properties. The Court first checked the list of properties and after it had made out a complete list it went into the question of the debts due. After both the lists were complete they were sent to the Collector, and the Collector liquidated the debts in order of priority as fixed under the Act and in accordance with the provisions of the Act by selling the property, or a sufficient part thereof, or by granting mortgages or leases. During the period that the proceedings under the Encumbered Estates Act were pending before the Special Judge, it was not open to any creditor to proceed against the landlord applicant and his debts could be liquidated only in accordance with the provisions of the Act.

34. Soon after the two Acts, i.e., the Encumbered Estates Act and the Agriculturists' Relief Act, came into force the question arose whether the two Acts

were mutually exclusive or a landlord applicant could have the benefit of both the Acts. A Bench of this Court held that a landlord applicant was entitled to have the benefit of both the Acts see the case in Sheo Baran Singh v. Ranbir Prasad : AIR1938 All477 which decision was affirmed by the same Bench on an application for review, and the decision is reported in Ranbir Prasad v. Sheobaran : AIR1939 All619 . The point was reconsidered by a Full Bench of this Court which overruled those decisions, and the decision of the Full Bench is reported in Girjesh Bahadur Pal v. Bhagwati ('42) 29 A.I.R. 1942 All. 153. Learned Counsel has argued that it must also be held that a landlord who has applied for benefit under the Encumbered Estates Act cannot also claim benefit under the Debt Redemption Act. The decision of the Full Bench turned on the interpretation of Section 7, Encumbered Estates Act, but by reason of the words 'notwithstanding the provisions of any decree or of any law for the time being in force...' in Section 8, Debt Redemption Act, which is the later Act, proceedings under this section cannot be stayed by reason of Section 7, Encumbered Estates Act. The language of the Debt Redemption Act which has replaced the Agriculturists' Relief Act is not the same and it would not be safe, therefore, to go by analogy. It is necessary for us to consider the language of the two Acts and to decide whether a landlord applicant, who has applied for benefit under the Encumbered Estates Act, is entitled to claim the benefit of the Debt Redemption Act also. The relevant portion of Section 8, Debt Redemption Act, under which the application was made is in these terms:

Notwithstanding the provisions of any decree or of any law for the time being in force, an agriculturist...liable to pay the amount due under a decree to which this Act applies passed before the commencement of this Act, may apply to the civil Court which passed the decree...for the amendment of the decree by reduction according to the provisions of this Act of the amount due under it, and on receipt of such application the Court shall, after notice to the opposite party, calculate the amount due from the applicant in accordance with the provisions of Sections 9 and 10 and shall amend the decree accordingly....

The words 'a decree to which this Act applies' have been defined in Section 2; Sub-section (6) as meaning 'a decree passed either before or after the

commencement of this Act in a suit to which this Act applies.' and in Section 2, Sub-section (17) 'suit to which this Act applies I means any suit or proceeding relating to a loan, but does not include proceedings under f the provisions of the U.P. Encumbered Estates Act, 25 [XXV] of 1934.' Learned Counsel for the opposite party has argued that he had not filed before the Special Judge any application for amendment and therefore the latter part of the definition of a suit to which this Act applies was not applicable to him. His application was to the City Munsif of Jaunpur for amendment of the decree passed by that Court in 1931 and according to him that Court was bound to amend the decree under the provisions of the U.P. Debt Redemption Act, no matter whether the Special Judge would or would not accept the amendment. According to him he could get the decree amended (by the City Munsif, then take the amended decree to the Special Judge and ask the Special Judge to pass a decree under Section 14, Encumbered Estates Act, and, by reason of Section 15 of that Act, to accept the amended decree as a decree binding between the parties. In this way, he contends, he could get the benefit of both the Acts without in any way contravening the provisions of either of the two Acts. Under Section 8, Debt Redemption Act, however, an applicant can apply for amendment of any decree under which he is liable to pay the amount. It is argued on behalf of the applicants that the amount is no longer due under the decree as the decree is in a process of suspended animation and is the subject-matter of a claim under the Encumbered Estates Act. The decree-holders cannot realise the decretal amount or any part of it so long as the proceedings under the Encumbered Estates Act are pending. When a landlord applies under Section 4, Encumbered Estates Act, giving a list of his debts, private and public, and a list of his properties, the Collector has to forward the application to the Special Judge under the provisions of Section 6, Encumbered Estates Act. On an order being passed under Section 6 forwarding the application to the Special Judge the following consequences so far as they are relevant to this case follow under Section 7 of the Act:

(1)(a) all proceedings pending at the date of the said order in any civil or revenue Court in the United Provinces in respect of any public or private debt to which the landlord is subject, or with which his immovable property is encumbered...shall be stayed, all attachments and other execution processes issued by any such Court

and then in force in respect of any such debt shall become null and void, and no fresh process in execution shall, except as hereinafter provided, be issued....

(2) After the passing of the said order (order under Section 6) and until the application is dismissed by the Special Judge under Sub-section (3) of Section 8 or proceedings under this Act are quashed under Section 20 or until the Collector had liquidated the debt in full under Section 23 or Section 24 or granted a mortgage under Section 25 or passed orders under Section 27 or Section 28, no decree obtained on the basis of any private debt incurred by the landlord after the passing of the order under Section 6 shall be executed against any of his property, other than proprietary rights in land, which has been mentioned in the notice under Section 11....

(3) After the passing of the order under Section 6 and until the Collector has declared in accordance with Section 44 that the landlord has ceased to be subject to the disabilities of this sub-section or until the passing of the order by the Special Judge referred to in Sub-section (2) of Section 44, no decree obtained on the basis of any private debt incurred after the passing of the order under Section 6 shall be executed against any of the landlord's proprietary rights in land mentioned in the notice published under Section 11....

It would be clear from the provisions quoted above that the decree-holders could not, after the order dated 29th May 1936, passed by the Collector under Section 6, realise any money by execution of their decree. After the application was forwarded to the Special Judge the landlord had to file a fresh application under Section 8 of the Act which is known as a written statement giving a complete list of his properties and a complete list of his debts. Notices were then issued to the creditors mentioned in this application and they were also published in the Government Gazette. The creditors had then to file their claims under Section 9 within a certain time provided by the Act, and if no such claim was filed under Section 9, then under Section 13 of the Act the debt would be deemed to be completely wiped off and if it was a debt due under a decree the decree would be deemed to have been satisfied. After, the claims are filed under Section 9, the Special Judge, after he has settled the list of properties, has to pass fresh decrees

under Section 14, Sub-section (4) which are all simple money decrees and while passing a decree under Section 14 the Special Judge is not entitled to apply the provisions of the Agriculturists' Relief Act, 1934. After the Agriculturists Relief Act was repealed, and the Debt Redemption Act was enacted it was not necessary to amend this sub-section as the Debt Redemption Act itself provided that the provisions of the Act were not applicable to any proceeding pending under the Encumbered Estates Act. In passing a fresh decree under Section 14, where a claim had already been the subject-matter of litigation and a decree, the Special Judge would be bound to accept the findings of the Court which had passed the previous decree except in so far as they were inconsistent with the provisions of Section 14 (see Section 15), and when a fresh decree was passed under Section 14, the rights which had come into existence under a previous decree were extinguished and were substituted by the rights under the new decree (see Section 18). It is true that the decree in Suit No, 555 of 1931 was not extinguished or replaced by a decree under Section 14 when the application dated 22nd September 1941 under Section 8 of the Debt Redemption Act, was filed as till then so far as we know, the Special Judge had not passed a decree under Section 14, Encumbered Estates Act. But so long as the proceedings under the Encumbered Estates Act were ' pending, by reason of Section 7 of that Act, it was not possible for the decree-holders to execute their decree and to realise the amount due under the decree nor were the landlord applicants liable to pay any portion of the money due under that decree. Under Section 8, Debt Redemption Act, an agriculturist was only entitled to apply for the amendment of a decree under which he was liable to pay the amount due under the decree to which the Debt Redemption Act applied. The word 'due' may mean either owing or payable. If it means presently payable or realisable, it must be held that the amount was not payable or realisable under the decree. The decree was no longer an effective decree and it had become a claim under the Encumbered Estates Act and the claim had to be proved afresh by the production of the decree and a fresh decree had then to be passed under Section 14 which could be the only decree realisable in accordance with the provisions of that Act. To my mind, therefore, it is clear that Section 8, U.P. Debt Redemption Act, could not apply to such a 'decree which was the subject-matter of a claim under the U.P. Encumbered Estates (Act and which was

no longer an effective decree.

35. If the mortgagee decree-holders had not put their mortgages in suit and obtained a decree on the basis thereof and had gone straight to the Special Judge and claimed the money due under the mortgages under Section 9, Encumbered Estates Act, and the proceedings were pending before the Special Judge for passing of decrees under Section 14 of that Act, the mortgagors could not have applied under Section 8 or Section 9, Debt Redemption I Act, for reduction of interest in accordance with the provisions of the latter Act. It does not appear why the mortgagors should be in a better position and should now be entitled to the benefit of both the Acts merely by reason of the fact that the mortgagees had obtained a decree before they claimed the amount under Section 9, U.P. Encumbered Estates Act, before the Special Judge. I am, therefore, of the opinion that the decision of the lower Court is wrong and it must be held that the applicants (sic, opposite parties?) were not entitled to apply to the City Munsif of Jaunpur for the amendment of the decree, No. 555 of 1931, so long as the proceedings under the U.P. Encumbered Estates Act were pending. This is my answer to the question on the merits. The opposite party has raised a preliminary objection that no revision lies to this Court and that, to my mind, is a more difficult question than the question on which I have expressed my opinion above. Learned counsel's argument is that there was another remedy open to the applicants by way of appeal to the lower appellate Court and we should not, therefore, interfere in revision. As the argument proceeded, however, the original submission that we should not exercise our discretion as there was another convenient remedy open to the applicants developed into an argument that we had no power to interfere in revision as an appeal lay to the lower appellate Court and our jurisdiction to interfere in revision under Section 115, Civil P.C., was, therefore, barred. Section 115, Civil P.C. (Act 5 [V] of 1908), is in these words:

The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto....

The argument is that the word 'appeal' in Section 115, Civil P.C., includes a second appeal. We have to consider firstly, whether an appeal could be filed

against the order dated 5th November 1941 directing the amendment of the decree dated 31st January 1933, and secondly, whether the words 'in which no appeal lies thereto' include a case in which an appeal could be filed in the lower appellate Court and an appeal from the appellate order could then be filed to this Court. Taking the second point first, the High Court can entertain a revision and interfere with an order passed by the lower Court in the exercise of its revisional jurisdiction if the three requirements of Section 115, Civil P.C., are fulfilled, (1) that it should be a case decided and it should not be an interlocutory order, (2) that the lower Court should have failed to exercise a jurisdiction vested in it by law or should have acted in the exercise of its jurisdiction illegally or with material irregularity and (3) that there should be no appeal to the High Court. It cannot be doubted that in the case before us all the three requirements are fulfilled. The order passed is not an interlocutory order but is an order that has finally decided certain independent proceedings started by an application under Section 8, U.P. Debt Redemption Act, and terminated by the order passed by the learned City Munsif. If our decision on the first point is correct, then the lower Court has exercised a jurisdiction which is not vested in it by law and has amended a decree which it could not amend under Section 8, U.P. Debt Redemption Act. Lastly, it cannot be doubted that no appeal could be filed to this Court against the order directing the amendment of the decree against which order this revision was filed and on the date that this revision was filed there was no order of the first Court or the appellate Court from which an appeal could be filed to this Court.

36. If a party takes the risk and does not file an appeal in the lower Court but comes up in revision to the High Court, no doubt the High Court may, in its discretion, refuse to entertain a revision on the ground that another convenient remedy was open to the party. But that is different from the proposition that the High Court can in no case entertain a revision where a party had a right of appeal to the lower Court. The law gives a party in certain cases a right to file an appeal, but it cannot be said that it is obligatory on him to do so and we must insist on his filing an appeal. Moreover, under Section 8, Sub-section (2), U.P. Debt Redemption Act, when a decree is amended under that section, the amended decree must bear the same date as the old decree. In this case, the decree was passed in the year 1931 and the amended decree must also bear the same date

of the year 1931. The period of limitation for filing the appeal had, therefore, long expired. No doubt a party dissatisfied with the amended I decree and wishing to file an appeal against it may apply under Section 5, Limitation Act, for extension of time, but so long as such an application has not been granted it must be conceded that he has got no right of appeal to the lower appellate Court. It must again be remembered that the Civil Procedure Code prefers the term 'appeal from an appellate decree,' and if a revision is preferred to the High Court after the decision of the case by the lower appellate Court the revision is against the order of the lower appellate Court, as the decree of the trial Court must be deemed to have merged in the decree of the lower appellate Court and must be deemed to have ceased to have a separate existence. Further, as pointed out by Rau J. in *Naphar Chandra Sardar v. Kali Pada Das* : AIR1940 Cal257 the words 'in which no appeal lies thereto' must mean in which no appeal lies to the High Court, and at this moment when the matter has arisen before us the case has not reached a stage when the next appeal, whether first or second, is to the High Court. There seems to be no justification for interpreting the words 'in which no appeal lies' as equivalent to the expression 'in which no appeal lies or may in future lie.' As I have already said, in the case before us no appeal could be filed even in the lower appellate Court unless that Court granted an application for extension of time under Section 5, Limitation Act. I see no reason or justification for restricting the jurisdiction of the High Court by interpreting the word 'appeal' as including a problematic second appeal, as the exercise of the revisional jurisdiction of the High Court is always discretionary, and where a party may have a convenient remedy by way of appeal to the lower appellate Court this Court can always refuse to entertain or interfere in revision.

37. Learned Counsel for the opposite party has drawn our attention to two recent decisions of this Court where the word 'appeal' in Section 115, Civil P.C., was interpreted to include a second appeal. The first is a decision reported in *Beni Madho Ram v. Mahadeo Pandey* : AIR1930 All604 . No reasons are given for the view expressed and the point has been more or less, assumed. The rest of the judgment shows that the observations were in the nature of an obiter, as their Lordships went on to hold that there was no ground for interference in revision. The other case is reported in *Radha Mohan Datt v. Abbas Ali Biswas* : AIR1931

All294 . A reference to the facts of that case would clearly show that the point did not arise at all and the observations were merely in the nature of an obiter.

38. The next point for consideration is whether an appeal lies from an amended decree. The Civil Procedure Code nowhere in express terms makes any provision for an appeal from an amended decree. It has been well settled that after a judgment has been signed, sealed and delivered, the decree passed thereon is final so far as the Court passing that judgment is concerned and it has no right to interfere or amend the judgment or the decree except to the extent of correcting clerical or arithmetical errors in the judgment or the decree. The Court passing the decree can amend that decree in proceedings for review under Section 114 and Order 47 of the Code. Where a person aggrieved from a decree has applied for review and the Court has granted the application, an appeal is provided for against that order under Order 43 of the Code on grounds mentioned in Order 47, Rule 7, Civil P.C. On the application for review being granted and the case being reheard, the original decree is replaced by the new decree against which an appeal may be filed under Section 96 and in that appeal the order granting review may again be challenged as provided for by Order 47, Rule 7, Civil P.C. The Courts having very limited power of amendment under Section 152, Civil P.C., it was not necessary to provide for separate appeal after the amendment. If there was no question of limitation, an appeal could be filed under Section 96, Civil P.C., against a decree at any time and after the amendment the party aggrieved could file an appeal from the amended decree. The question of limitation creates difficulty as the amended decree bears the date of the original decree. The authorities are all one way that where purporting to act under Section 151 or Section 152, a Court had made a substantial amendment which had affected the rights of a party, the party affected thereby could appeal against the amended decree and apply under Section 5, Limitation Act, for extension of time. And if it was clear that the real grievance of the appellant was against the amendment the Court would grant the application under Section 5, Limitation Act, for extension of time; but where the real grievance was against the original decree and the order of amendment was merely an excuse put forward for condonation of the delay, then the Court would refuse to grant extension of time. On an application under Section 5, Limitation Act, being granted the appeal would be admitted and the whole case would then be open

before the appellate Court and the appellate Court could not confine the arguments only to that portion of the appeal which related to the amendment.

39. The Debt Acts have given the Courts extended power of amendment, while they have not made any separate provision for appeal against an amended decree. Section 8 (2), U.P. Debt Redemption Act, provides that a decree amended under the provisions of Sub-section (1) shall be deemed to bear the date of the original decree. It would be in rare cases that an appellant desirous of filing an appeal against an amended decree would find that the period of limitation had not yet expired. An appeal against the amended decree would have to be filed under Section 96, Civil P.C., with an application under Section 5, Limitation Act, for extension of time. Such applications would no doubt be considered on the same principles which have been set out by me above and which are now so well established. Even if it were to be conceded that an appeal could be filed from the amended decree, I see no reason why it should not be possible for the party aggrieved by the order to file a revision in this Court against the order directing amendment of the decree. This point arose in the year 1885, and on a difference of opinion between Oldfield and Mahmood JJ. the matter was referred to the rest of the Court consisting of the learned Chief Justice and three learned Judges. The Full Bench agreed with Mahmood J.: see *Surta v. Ganga* ('85) 7 All. 875 (F.B.) and *Raghunath Das v. Raj Kumar* ('85) 7 All. 876 (F.B.). In the first case *Raghunath Das v. Raj Kumar* ('85) 7 All. 276 the defendant had applied for amendment of a decree in regard to costs. This application was allowed by the Court passing the decree. An application in revision was filed to this Court under Section 622 (which now corresponds to Section 115), Civil P.C. of 1882, on the ground that the learned Judge had no jurisdiction under Section 206 (which now corresponds to Sections 152 and 153) to amend the decree., Old-field J. was of opinion that the decree as amended was the decree in the suit and, therefore, an appeal lay from it under the provisions of Section 540 (which now corresponds-to Section 96) when the validity of the amendment could be questioned. He was, therefore, of the opinion that as an appeal lay to the High Court no application in revision could be entertained. Mahmood J. on the-other hand, was of the opinion that the proceedings for amendment of the decree were separate proceedings and ended in the order directing the amendment of the decree. These proceedings must be

considered as a case decided by the order and as the order was passed without jurisdiction a revision was entertainable in this Court. The matter again came up before the same Bench in another case *Surta v. Ganga* ('85) 7 All. 411 and the two learned Judges stuck to their respective views expressed in the previous case. Both these cases were thereupon referred to a Full Bench, and the decisions of the Full Bench are reported in *Raghunath Das v. Raj Kumar* ('85) 7 All. 876 (F.B.) and in *Surta v. Ganga* ('85) 7 All. 875 (F.B.) The Full Bench consisting of Petheram C.J., Straight, Brodhurst and Tyrrell JJ. agreed with Mahmood J. Learned Counsel for the opposite party has urged that the Full Bench merely accepted the judgment of Mahmood J. and Mahmood J. did not notice the ground on which Oldfield J. had held that no revision lay to this Court, his ground being that an appeal could be filed to this Court from the amended decree and in that appeal the validity of the order directing amendment could be questioned. The fact that an appeal could be filed against the amended decree can admit of no doubt. As I read the judgment of Mahmood J., his judgment means that, even if an appeal could be filed from the amended decree there was no reason why the High Court should not entertain a revision from an order directing that the decree be amended. The law must be deemed to have been settled to that effect about sixty years back and this Court has consistently acted on that decision. I do not find any reason why we should make any departure from such well-settled principles. Apart from anything else, even on the ground of stare decisis I would hold that a revision against an order directing amendment of the decree was entertainable. In any case, the judgment of the Full Bench, reported in *Surta v. Ganga* ('85) 7 All. 875 (F.B.) referred to above, being of four Judges, I do not think this Bench is competent to overrule that decision, specially as there is a difference of opinion on the point. Learned Counsel for the opposite party has argued that an order granting or refusing an application under Section 8, U.P. Debt Redemption Act, is a judgment which must be followed by a decree. In other words, the order directing amendment leads to two results, firstly, there must be a decree bearing the date of the order to the effect that the previous decree in the suit be amended, and secondly, amendments should be made where necessary in the previous decree. It is argued that an appeal can be filed under Section 96, Civil P.C., against the decree directing or refusing amendment and as that decree would bear the date of

the order no question of filing an application under Section 5, Limitation Act, would arise. In support of the above view stress is laid on the definition of the word 'decree' in Section 2, Sub-section (2), Civil P.C. The relevant portion of that section is that

'decree' means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit....

It is argued that the question in the suit was how much the plaintiffs were entitled to get from the defendants. That was decided by the decree. The Act, however, gave the judgment-debtors a right to have that matter re-, opened. The question before the Court, after the application by the judgment-debtors, again was what was the amount for which a decree could be passed in favour of the decree-holders and a decision of this matter is in controversy in the suit and therefore a judgment on which a decree should follow. The result of accepting this view would be that after the order directing an. amendment there would be two decrees in the suit, one, the decree directing that the previous decree be amended, and the other, the amended decree itself. It is no doubt true that there is nothing in the Code which says that there must be one decree passed in a suit and it may be possible to conceive, in every exceptional case, of more than one decree in one suit. But to say that there should be a separate decree for every adjudication which varies by way of amendment the amount found previously due appears to me to upset the well settled ideas as regards the meaning of the term 'suit' and the term 'decree.' The word 'suit' has not been defined. In *Hansraj Gupta v. Dehra Dun-Mussoorie Electric Tramway Co. Ltd.* the question arose whether an application made by the Official Liquidators under Section 186, Companies Act, was the institution of a suit, and their Lordships observed at page 183:

The word 'suit' ordinarily means, and apart from some context must be taken to mean, a civil proceeding instituted by the presentation of a plaint.

The plaint in the case before us was presented in the year 1931 and was numbered and registered as Suit No. 555 of 1931. The decree which finally determined the rights of the parties so far as the Court passing the decree was

concerned was passed on 31st January 1933. The application to amend the decree which would be either rejected or granted could not be deemed to be a fresh suit or the continuation of the old suit and the order granting or dismissing it could not be considered to be a fresh decree. What a suit or a decree means is well known. Where the Legislature intended to make a departure from that well-known meaning, it has mentioned the exceptions in the definition itself, for example:

It shall be deemed to include the rejection of a plaint and the determination of any question within Section 47 or Section 144, but shall not include (a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default.

40. In Act, 8 [VIII] of 1859, there was no section defining the word 'judgment' or the word 'decree.' Sections 183 and 188 directed what a judgment should contain and Section 189 referred to a decree. From those sections it is clear that a suit terminated with the judgment and the decree followed the judgment. That this was the meaning of the word 'judgment' is made clear by the definition of that word in Section 2 of Act 10 [x] of 1877. 'Judgment' was defined as meaning 'the statement given by the Judge as the grounds of the order or decree by which a suit or other judicial proceeding was determined.' This definition was amended in the year 1879 when 'decree' was defined as meaning 'the formal expression of an adjudication upon any right claimed or defence set up in a civil Court, when such adjudication, so far as regards the Court expressing it, decided the suit or appeal, and 'judgment' was defined as meaning 'the statement given by the Judge of the grounds of a decree or order.' Those definitions were retained in Act 14 [XIV] of 1882. It would be clear from the above definitions that the decree was expected to decide the suit or appeal. Under Section 2, Sub-section (2) of Act 5 [v] of 1908, a 'decree' now is defined as 'the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final,' and a 'judgment' has been defined in Section 2, Sub-section (9) as 'the statement given by the Judge of the grounds of a decree or order.' These definitions must be read along with Section 33 of the Code which

reads as follows:

The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.

Order 20, Rule 1, Civil P.C., lays down:

The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

Order 20, Rule 6 is in these terms:

The decree shall agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit,

and then Order 20, Rule 7 says:

The decree shall bear date the day on which the judgment was pronounced....

To my mind, the words 'with regard to all or any of the matters in controversy in the suit' in Section 2, Sub-section (2), Civil P.C., do not mean that there can be separate decrees for each matter in controversy in the suit. Those words have been introduced to make it clear that no Court is bound to decide all, the matters in controversy in the suit if it is not necessary to do so to conclusively determine the rights of the parties.

41. I am, therefore, of opinion that an adjudication under Section 8, U.P. Debt Redemption Act, directing that a decree be amended cannot be treated as the basis of a separate and independent decree. This, to my mind, is made absolutely clear by Sub-section (2) of Section 8 of the Act which lays down that the amended decree shall bear the date of the original decree. An amended decree, as I have already held above, is still a decree and, as such, it is appealable under Section 96, Civil P.C. If the period of limitation has not expired, then no doubt an appeal would lie as a matter of right and the appellant would also have the right to challenge the order of amendment. If, however, the period of limitation has

expired, the party aggrieved by the amendment can file an appeal with an application under Section 5, Limitation Act, which no doubt will be granted if his main grievance is against the amendment and is not making the amendment merely an excuse for filing an appeal which had clearly become time-barred. To my mind, Section 8, Sub-section (2), U.P. Debt Redemption Act, makes it quite clear that, when a decree is amended under the provisions of Section 8 of that Act, the Legislature did not intend that it should be treated as a new decree. If that were the intention, it was not necessary for the Legislature to have used the word 'amend' all through that section. In any view of the matter, I am clearly of the opinion that the revision is entertainable. I would, therefore, allow this revision and set aside the order of the learned City Munsif with costs in both the Courts.

42. The application in revision is dismissed but, in the circumstances of the present case, we direct the parties to bear their own costs in this Court.