

Maiku Lal Vs. Mulaim Singh and ors.

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Court : Allahabad

Decided On : Feb-11-1921

Reported in : AIR1921All130; 62Ind.Cas.910

Judge : Tudball, J.

Appellant : Maiku Lal

Respondent : Mulaim Singh and ors.

Judgement :

Tudball, J.

1. A decree was passed in a mortgage suit. An appeal was preferred and the Appellate Court upheld the decree and dismissed the appeal. There are apparently some errors on the face of the decree, as drawn up in the Court of first instance. That Court on application made to it held that it had no power to amend the decree inasmuch as that power now vested in the Appellate Court. On application to the Appellate Court, the Judge held that his dearer, that is the decree of the Appellate Court, contained no errors and that he had no power whatsoever to amend the decree as drawn up in the Court of first instance.

2. The learned Judge referred to the same ruling as the Court of first instance, namely, that of Muhammad Sulaiman Khan v. Muhammad Yar Khan 11 A. 267 : A.W.N. (1889) 55 : 13 Ind. Jur. 427 : 6 Ind. Dec. (N.S.) 598, I.L.R. 11 Allahabad

267, which is also reported in the Weekly Notes for 1889 at page 55. The lower Court's order is obviously incorrect. The learned Judge has overlooked the fact that his decree now includes the decree of the Court of first instance. The two decrees have merged into one decree and for the purposes of execution must be read together as constituting one and the same decree the Judge has power to amend, and he must, therefore, go into the application, examine the decrees of both the Courts and if there are any errors, he must amend them. I set aside the order of the Court below and remand the case to that Court with orders to re admit the application and to consider and decide it in view of the remarks made above.

3. As nobody appears to oppose this application in this Court, the applicant will have half his costs in this Court. The costs in the Court below will abide the result.

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