

Uma Sundari Devi Vs. Bindu Bashini Chowdhrani and anr.

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Court : Kolkata

Decided On : May-07-1897

Reported in : (1897)ILR24Cal759

Judge : Macpherson and ;Ameer Ali, JJ.

Appellant : Uma Sundari Devi

Respondent : Bindu Bashini Chowdhrani and anr.

Judgement :

Macpherson and Ameer Ali, JJ.

1. On an appeal from an order allowing execution of a decree, this Court held that the decree-holder was not entitled by the decree to the particular relief claimed, and remarked that if the decree was not in conformity with the judgment, the proper course for him to take was to get it brought into conformity by an application under Section 206 of the Code of Civil Procedure. The plaintiff who was the decree-holder then applied to the District Judge who had made the decree in question to bring it into conformity with the judgment. The District Judge held that as the decree of the District Court had been the subject of an appeal to this Court, he had no jurisdiction to deal with it. This rule was then obtained by the petitioner to show cause why the District Judge should not be directed to alter the decree under the provisions of Section 206. The Judge was not right in saying that this Court altered the decree of the Lower Appellate Court, as admittedly it did not

do so. What happened was that this Court dismissed the appeal of the defendant under Section 551 of the Code of Civil Procedure. It is argued that a dismissal under Section 551 is not a decree or an adjudication of the rights of the parties, but amounts to nothing more than a refusal to entertain the appeal, and that the Lower Appellate Court is consequently not precluded by the order of dismissal from entertaining an application for the amendment of the decree which it had passed. It is true that the Court, acting under Section 551, is not in a position to deal fully with the appeal or to make any alteration in the judgment or decree appealed against. Nevertheless, it is a determination and a final determination of the appeal and it adjudicates on the questions raised by the appellant so far as it is necessary to adjudicate upon them for the purposes of the appeal, and we can see no distinction between an appeal which is dismissed under Section 551 and an appeal which is dismissed under any other section of the Code after full hearing. The case of *Royal Reddi v. Linga Reddi* I.L.R. 3 Mad. 1 supports this view. Rightly or wrongly it is not the practice of this Court to draw up decrees in cases dismissed under Section 551, or, in the case of a second appeal, when the decree is one of dismissal, to record anything in the decree more than that the appeal is dismissed. But the effect practically is to make the decree which is confirmed, the final decree to be executed in the suit, and there can be no question that this Court has power to amend the decree which has been in effect confirmed by it so as to bring it into conformity with the judgment which is also confirmed. The rule which has been issued in this case called upon the opposite side to show cause why the District Judge should not be directed to make the amendment. But this does not appear to be strictly in conformity with the order which the Court made when the rule was granted. All the parties are, however, now before the Court, and we are in a position fully to deal with the matter on its merits. It is an admitted fact that the decree of the District Judge is not in conformity with his judgment. The decree simply directs that the appeal be decreed without specifying in any way the relief given by it. In the judgment it was distinctly held that the plaintiff had proved her title to and possession of the land (plot kha) on which a privy had been built, and that the defendant must remove that privy and vacate the land. We, therefore, direct that the decree of the District Court, setting aside the decree of the first Court, be amended; and that it be

declared that the plaintiff's title to the land (plot kha) on which a privy has been built is established, and that she is entitled to possession thereof, and that the defendant must remove the privy and vacate the land. The defendant to pay the costs of the appeal and of the suit in the lower Courts with the usual interest. A copy of this order will be sent to the lower Court to be attached to the decree.

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