

(1924) 03 CAL CK 0062
In the Calcutta High Court

Kabir-ud-Din Mondol and Another

APPELLANT

Vs

Entaj Mondol and Others

RESPONDENT

Date of Decision : 10-03-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152

Citation : AIR 1925 Cal 420 : 79 Ind. Cas. 586a : 79 Ind. Cas. 586

Hon'ble Judges : Suhrawardy, J;Chotzner, J

Bench : Division Bench

Judgement

1. This Rule is directed against an order of the Munsif of Katwa, dated the 28th April, 1923, refusing an application by the petitioner for amendment of the final decree in a mortgage suit. The learned Munsif suggested that the proper remedy of the plaintiff was to apply for a review of the judgment and dismissed the present application which purported to have been made under Sections 151 and 152, Civil Procedure Code, on the ground that the decree sought to be amended was not in conformity with the judgment. In the preliminary decree thirteen persons had been named as defendants against whom the decree was obtained. There was an appeal and on appeal there was some modification made by the Appellate Court. In the final decree only the names of four of the defendants appeared as judgment-debtors, these are defendants Nos. 1,3,4 and 5. The learned Munsif has based his opinion that the present application u/s 151 or Section 152 was not maintainable, mainly on two facts noticed by him. In the first place, he says that there is no clerical mistake in the final decree as the return of notices show that only the names of those on whom notices of final decree were served were entered in the decree. This statement of fact is not correct. We have been taken through the record and we find that there is proof of services on at least eleven of the defendants. All the defendants were mentioned in the preliminary decree except defendants Nos. 2 and 7. The other fact on which he relies is that in the application for final decree the plaintiff stated the names of only those defendants who were principal defendants. This also is not correct. The application has been placed before us and we find that

the plaintiff named no less than thirteen judgment-debtors therein. These facts have not been controverted by the learned Vakil for the opposite party. That being so, clearly, this is a case in which the decree is not in conformity with the judgment. The order passed on the application for final decree made by the petitioner is in these terms: " Service of notice proved. An affidavit filed in support of the petition stating that the decretal amount has not been realised from defendants. Time of grace expired. No objection put in; ordered the decree be made final with costs." We have observed that the application for final decree mentioned thirteen judgment-debtors and the order passed by the Court upon it purported to pass final decree against all the judgment-debtors. We do not consider that the plaintiff's only remedy is to apply for a review of judgment. Sections 151 and 152, Civil Procedure Code, give the Court ample jurisdiction to correct mistakes like the present, to pass such order in the exercise of the inherent power vested in the Court, as may be necessary for the ends of justice, or to prevent abuse of the process of the Court. We may remark that the inherent power of the Court as vested in it by its own constitution is not limited to Sections 151 and 152, Civil Procedure Code. See the cases of *Brij Ratan v. Joynarain* (1910) 37 Cal. 649 and *Barhamdeo Singh v. Harmoga Narain Singh* (1914) 20 C.L.J. 18. We think that the present case is one in which the Court should amend the decree.

2. It has been argued by the learned Vakil for the opposite party that we have no jurisdiction to interfere with the order passed by the Court below u/s 115, Civil Procedure Code. The effect of the order complained against is that the lower Court has refused jurisdiction which it undoubtedly had under Sections 151 and 152, Civil Procedure Code. We think that the result of the order passed by the lower Court is likely to cause serious injury to the petitioner. We, therefore, hold that the order of the Court below should be set aside and that Court should be directed to dispose of the petitioner's application according to law. The opposite party will be entitled to take such objection as they may be advised to take at the time of the disposal of this application. In the circumstances of this case, each party will bear his own costs of this Rule. The rule is made absolute on the above terms.