

(1926) 03 CAL CK 0069
In the Calcutta High Court

Nirendra Chandra Bhattacharya

APPELLANT

Vs

Digendra Nath De

RESPONDENT

Date of Decision : 15-03-1926

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : AIR 1926 Cal 1100 : 96 Ind. Cas. 195

Hon'ble Judges : Page, J;Cuming, J

Bench : Division Bench

Judgement

Cuming, J.—The facts of the case are as follows: The petitioner who has obtained this Rule instituted a suit in the Court of the Subordinate Judge of Cachar on the 27th September, 1921 for the recovery of Rs. 4,882-10-8 against two persons, defendants Nos. 1 and 2. Defendant No. 2 did not appear. Defendant No. 1 appeared and he stated that he and defendant No. 2 borrowed money from the plaintiff and he wrote the document. He, however, added that he was merely a surety, and at the same time a written petition was put in, in which he stated, that he was only liable as surety. On the 20th December, 1921, the learned Subordinate Judge Mr. G.D. Walker passed the following judgment "defendant No. 1 examined, suit decreed on admission against defendant No. 1 and ex parte, against defendant No. 2 both with costs." On the 7th January, 1922 the decree was drawn up in accordance with the judgment, namely, "that the suit be decreed with costs on admission against the defendant No. 1 and ex parte against defendant No. 2." The petitioner proceeded to put this decree into execution against defendant No. 2 and realized the sum of Rs, 2,465 from the son and legal representative of the defendant No. 2 who had died in the meantime. He then put the decree in execution for the balance of the claim against the present opposite party, the son of defendant No. 1 who had died in the meantime. In this execution proceeding which was No. 49 of 1921 the opposite party filed an objection stating that he would not be made liable till the defendant No. 2 failed to pay. On the 24th of April 1925 defendant No. 1 the present opposite party made an application in the Court of the Subordinate

Judge of Cachar for the amendment of the decree on the ground that the decree was not in accordance with the judgment. He seems to have contended that the expression "on admission" meant "on admission that he was only a surety." This contention found favour with the learned Subordinate Judge Mr. Denneby. He held that it was clearly the intention of the Court who passed the judgment to give a decree against defendant No. 1 only if the amount were not recoverable from defendant No. 2. In this view of the matter he ordered the amendment of the decree. I may here note that this was not the same learned Judge who delivered the original judgment and signed the original decree.

2. I think it is quite clear from the facts that the learned Subordinate Judge had no jurisdiction to amend the decree. The judgment is perfectly plain. "The suit is decreed on admission against defendant No. 1 and ex parte against defendant No. 2" and the decree is in conformity with this judgment. I do not think that the learned Judge is entitled to read the words "on admission" as meaning "on admission in terms of the petition filed by defendant No. 1." If the learned Judge had meant this, he would clearly have said so. If this was his intention, it is obvious that it was open to the defendant No. 1 at the time of the trial to bring this fact to the notice of the learned Judge and to ask that the decree which was then drawn and which was signed by his Pleader should be made in conformity with the judgment. Had this application been then made immediately, the Judge who passed the judgment was in a position to say at once whether by the expression "on admission" he intended to say "on admission of his liability as surety." No such application was made and defendant No. 1 has waited until there was a fresh Judge to make his application. I do not think that the learned Subordinate Judge Mr. Denneby was entitled to read into the judgment of his predecessor words which were not there. The decree is clearly in conformity with the judgment and the learned Subordinate Judge, Mr. Denneby had no jurisdiction, therefore, to amend the decree. His order of the 3rd November, 1925 amending the decree u/s 151 must be set aside and the original decree restored.

3. The Rule is made absolute in these terms. The petitioner is entitled to the costs of this Rule. Hearing fee two gold mohurs.

Page, J.

4. I agree.