

**(1900) 07 CAL CK 0007**  
**In the Calcutta High Court**

**Case No :** Applications in appeal from Original Decree No. 204 of 1897

Percival

APPELLANT

Vs

Collector of Chittagong

RESPONDENT

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**Date of Decision :** 31-07-1900

**Acts Referred:**

**Citation :** (1900) 07 CAL CK 0007

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### Judgement

Ameer Ali and Brett, JJ.—In the Land Acquisition case (No. 204 of 1897) we delivered our judgment on the 20th of July 1900. After the judgment had been pronounced, Babu Ram Charan Mitter, the Government Pleader, called our attention to the amount of the claim stated in the memorandum of appeal. We have no doubt, from what we know of the learned gentleman, that had his attention been directed to the amount therein stated, he would have brought it to the notice of the Court at the earliest stage. Apparently the matter did not strike him or come to his knowledge until judgment had been delivered.

2. Upon his mentioning the matter, Mr. Pugh, who appeared for the Appellant, objected to the question being raised at that late stage, for he contended that, had his attention been called to it at the hearing, he would have applied for leave to pay in the additional court-fee, so as to cover whatever had been found by the Court the claimants were entitled to. At the time we were under the impression that leave might be granted to the Appellant to put in the extra court-fees and that a formal application to that effect by the learned Counsel for the Appellant would be necessary.

3. With regard to the objection urged by the learned Government Pleader, we directed that the objection should be made formally by a petition and accordingly on the 23rd July an application was made on behalf of the Appellants for leave to put in the extra court-fee and at the same time a petition was presented on behalf of the Government, stating that, inasmuch as in the memorandum of appeal, the Appellants have chosen to put the amount of the claim at Rs. 13,000, the Court should not enhance the award made by the Subordinate Judge to an

amount beyond that stated in the memorandum of appeal.

4. Upon the question of valuation, our attention was drawn to the various sections of the Court-fees Act and in an ancillary manner, to some of the provisions of the Code of Civil Procedure, but reliance was chiefly placed on the provisions of the Court-fees Act.

5. It appears to us that the controversy which has arisen, in consequence of the mistake, or otherwise, on the part of the Appellants and owing to the objection taken by the learned Government Pleader, after the pronouncement of the judgment, does not seem to turn upon the question of valuation so much as upon the jurisdiction of the Court to allow the Appellant to amend the memorandum of appeal, or, in other words, to allow the award to be raised beyond the amount stated in the memorandum of appeal as the amount in respect of which the appeal was brought.

6. It is quite clear that in the majority of cases, the Plaintiff is bound by the amount of the claim which he puts forward in his plaint, excepting in certain cases provided for by the Statutes; for example, as regards claims for mesne profits. The Court has DO power to make a decree in favour of the Plaintiff beyond the amount of the claim stated in the plaint.

7. We may take one instance as an illustration. A suit is brought upon a balance of accounts and the Plaintiff, instead of claiming whatever may be found due upon the taking of accounts, stated a specific sum as the amount claimed. It does not seem to us that the Court would be entitled, without an amendment of the plaint, to award a decree for more than what is claimed. Section 53, Code of Civil Procedure, gives the Court the power of allowing the plaint to be amended at any time before judgment, upon such terms as to the payment of costs as the Court may think fit, so that the power of allowing the amendment is restricted to the time before judgment is delivered and it would be open to the Plaintiff, in the event of his stating the amount of his claim by inadvertence, or if he has not chosen to proceed upon the basis of the taking of the accounts to ask for amendment at any time before the judgment is pronounced; but under the Code, the Plaintiff is not allowed the amendment after judgment. By Section 582, Code of Civil Procedure, the provisions of the Code relating to suits are made applicable to appeals and the question for consideration is whether the principle applicable to the amount of claim mentioned in the plaint is also applicable to the amount of claim stated in the memorandum of appeal. It is of course open to the Appellant to appeal for the whole amount disallowed by the Court below or only in respect of a part thereof. He must choose his own course. It is not the duty of the Respondent to bring to the notice of the Appellant any omission or inadvertence on his part; and the Courts, in the generality of cases, except in cases of mesne profits and the like, which are regulated by Statutes, cannot pass a decree for a larger amount than that stated in the memorandum of appeal and in respect of which the appeal is actually brought. Suppose for instance, a Plaintiff brings a suit for Rs. 50,000 in the Court below and obtains a decree for

Rs. 30,000, the claim for Rs. 20,000 being disallowed. For some reason or other, the Plaintiff appeals for Rs. 10,000. There is nothing to show that unless an amendment is allowed before judgment is pronounced, the Court could in appeal decree anything more than the amount for which the appeal is brought.

8. In this particular case, no doubt the Appellants contended upon various facts, which we found partly to be well founded, for a considerable sum of money far in excess of that awarded by the Subordinate Judge and stated in the memorandum of appeal and upon a consideration of those facts, we are of opinion that they were entitled to somewhere like Rs. 40,000.

9. We regret that the attention of the Court was not called to this circumstance until after the pronouncement of the judgment. It should have been done during the course of the hearing, because it might have had some bearing upon some parts of the case; but so far as this is concerned the Respondent owns no duty to the Appellants, but to the Court.

10. As the Appellants made no application to us before the judgment was pronounced, we think we cannot, after delivery of judgment, allow him leave to amend his memorandum of appeal and that under the provisions of Section 582, Code of Civil Procedure, we ought to restrict our award to the amount stated in the memorandum of appeal, plus the amount allowed by the Lower Court and the usual statutory allowance.

11. Under the circumstances, we make no order as to the costs of these applications.