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made retrospectively. By the amendment, the words "agricultural land situated in a rural area" were substituted in place of the words "agricultural land" in Rule 18 and it was specifically mentioned that these words shall be deemed always to have been substituted.

With regard to the third contention, the same is also without any merit. In the return filed by the State, it has been mentioned that Rule 95 was really a concession, inasmuch as it extended the period of submission of claims in respect of the urban agricultural lands beyond the expiry of the Displaced Persons (Claims) Act, 1950. The displaced persons could have filed their claims under the Act, but since due to some misunderstanding they did not do so, the Government gave them the concession of filing the claims under the name of rehabilitation grant applications under Rule 95. Under Rule 98-A, as already observed above, these applications are treated at par with the 'verified claims'.

Regarding the fourth and the last contention, the same is also without any substance. Rule 98-A clearly mentions that the provisions of the Rules in the other Chapters shall apply to the displaced persons entitled to the payment of rehabilitation grant under Rule 95 in the same manner as if they had verified claim of the same value. Therefore, Rule 98-A clearly applies to the case of the petitioners.

In view of what I have said above, this petition fails and is dismissed, but with no order as to costs.

B. R. T.

APPELLATE CIVIL

Before H. R. Khanna, J.

MOHAMMED IBRAHIM FEROZI,—*Appellant*

versus

MST. SHAFIQAN, AND OTHERS,—*Respondents.*

Regular Second Appeal No. 146-D of 1964.

1966

January, 31st

Code of Civil Procedure (Act V of 1908)—Ss. 151 and 152—Decree amended—Whether gives a fresh right of appeal when appeal against original decree dismissed as barred by time—Limitation Act (ix of 1908)—Art. 152—Effect of.

The original decree was passed on 23rd December, 1959, and the appeal against that decree was dismissed on 21st February, 1961, as barred by time. After about 3 years the appellant applied for amendment of the decree and the amendment was allowed. The appellant filed an appeal against the amended decree. The questions arose (1) whether the appeal was competent and (2) whether it was within time.

Held, that as a result of the amendment the appellant no doubt got a right of appeal to assail the amended decree, but the scope of the appeal filed by him was of a limited character and was confined only to the matters covered by the amendment. The amendment could not have the effect of re-opening all matters, including those in respect of which the appellant filed the earlier appeal which was dismissed. The appellant, having already filed an earlier appeal to challenge the correctness of the findings of the trial Court, cannot, after the dismissal of that appeal, file another appeal to challenge those very findings on the ground that subsequent to the dismissal of the earlier appeal the decree was amended. After the dismissal of the earlier appeal, the decree would become immune from attack and would no longer remain vulnerable in so far as it relates to matters which were covered by the first decree and did not come into existence as a result of the amendment. It would also make no material difference that the earlier appeal was dismissed on the ground of being time-barred and not on merits, because the dismissal of an appeal on the ground of limitation is as effective as its dismissal on merits.

Held, that according to Article 152 of the Indian Limitation Act, 1908, the appeal had to be filed within thirty days from the date of the decree. There is no provision in this Article that in case of amendment, time would run from the date on which amendment, is allowed. Of course, in case the appeal is filed against the amended decree and relates to matters arising out of the amendment, the Court would always condone the delay in filing the appeal under section 5 of the Limitation Act. No question of condoning the delay would, however, arise in case the appeal, though filed after the amendment of decree relates to matters not covered by the amendment.

Regular Second Appeal from the decree of the Court of Shri G. R. Luthra, Additional Senior Sub-Judge, Delhi (with Enhanced Appellate Powers), dated the 20th day of July, 1964, affirming that of Shri Mahesh Chandra, Sub-Judge, 1st Class, Delhi, dated the 23rd December, 1959, passing a preliminary decree with costs in favour of the plaintiffs and against defendants for the administration of

properties, as detailed in Schedules B, item Nos. 2 to 6 and Schedule A, item No. 2 and houses Nos. 7693, 7700 and 7701 and also for rendition of accounts as prayed in the plaint.

SULTAN YAR KHAN, ADVOCATE, for the Appellant.

D. K. KAPUR, ADVOCATE, for the Respondents.

JUDGMENT

Khanna, J. KHANNA, J.—This regular second appeal filed by Mohammad Ibrahim Ferozi defendant is directed against the judgment and decree of the learned Additional Senior Subordinate Judge, Delhi, whereby he dismissed the appeal of the appellant against the decision of the trial Court.

The brief facts of the case are that the plaintiffs-respondents 1 to 4 brought a suit for administration of the property left by one Abdul Majid Ferozy against the appellant and other respondents. The suit was decreed on 23rd December, 1959, by Shri Mahesh Chander, Subordinate Judge, Delhi, who held that Abdul Majid was owner to the extent of one-half share in property Nos. 7693, 7700 and 7701, and to the extent of one-fourth share in a vacant plot of land shown in plan Exhibit P. 6. Preliminary decree for administration of the above-mentioned properties and for rendition of accounts was, accordingly, awarded in favour of the plaintiffs-respondents against the defendants. By inadvertence the shares, mentioned above in the different properties, were not mentioned in the decree-sheet and it showed as if it related to the entire properties mentioned above. This mistake was, however, not noticed by any of the parties. The appellant filed an appeal against the original decree but the same was dismissed on 21st February, 1961, on the ground that it was time barred. On 24th January, 1964, the appellant made an application under sections 151 and 152 of the Code of Civil Procedure for amendment of the decree on the ground that on account of accidental slip the same was not in accordance with the judgment and should have been for administration of the shares of the above-mentioned properties. The application was accepted and the decree-sheet was amended on 12th March, 1964. A fresh appeal was thereafter filed on 27th March, 1964, against the

amended decree. The learned Additional Senior Subordinate Judge dismissed the appeal on the ground that the amendment of the decree did not alter the judgment and made no alteration on the merits. It was made with a view to remove accidental slip and did not change the complexion of the decree so as to give a fresh right of appeal to the appellant. The appeal was accordingly, dismissed.

Mr. Sultan Yar Khan on behalf of the appellant has argued that as the original decree was amended on 12th March, 1964, the appellant, in spite of the dismissal of his earlier appeal, was entitled to maintain his subsequent appeal in the lower Appellate Court. As against that, Mr. Kapur on behalf of the plaintiffs-respondents has argued that the appellant in his subsequent appeal cannot agitate matters which were covered by the original decree and did not come into existence as a result of amendment. It is also urged that the appeal in the Court of the learned Senior Subordinate Judge was barred by limitation and there was no sufficient ground for condoning the delay.

I have given the matter my consideration and am of the view that there is force in the contentions advanced on behalf of the plaintiffs-respondents. The original decree, as would appear from the resume of facts given above, is dated 23rd December, 1959, and appeal against it was dismissed on 21st February, 1961. It was about three years after dismissal of the appeal that the appellant applied for amendment of the decree and the amendment was allowed. As a result of amendment the appellant no doubt got a right of appeal to assail the amended decree, but the scope of the appeal filed by him was of a limited character and was confined only to the matters covered by the amendment. The amendment, in my opinion, could not have the effect of re-opening all matters including those in respect of which the appellant filed the earlier appeal which was dismissed. The appellant having already filed an earlier appeal to challenge the correctness of that appeal, cannot after the dismissal of that appeal file another appeal to challenge those very findings on the ground that subsequent to the dismissal of the earlier appeal the decree was amended. After the dismissal of the earlier appeal, the decree would become immune from attack and would no longer remain

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vulnerable in so far as it relates to matters which were covered by the first decree and did not come into existence as a result of the amendment. It would also make no material difference that the earlier appeal was dismissed on the ground of being time-barred and not on merits, because the dismissal of an appeal on the ground of limitation is as effective as its dismissal on merits.

No objection can also be raised to the amendment of the decree by the appellant, because the appellant himself sought this amendment and it did not in any way operate to his detriment. Indeed the only matters, which the appellant now seeks to agitate, are those covered by the original decree and not those arising out of amendment.

The subsequent appeal filed by the appellant before the lower appellate Court was also barred by time. The decree of the trial Court was; dated 23rd December; 1959; and according to Article 152 of the Limitation Act, 1908, the appeal against the decree should have been filed within thirty days. It is not disputed that it was that Article which applied to the appeal. The aforesaid Article makes it clear that the period of thirty days runs from the date of the decree. There is no provision in that Article that in case of amendment, time would run from the date on which amendment is allowed. Of course, in case the appeal is filed against the amended decree and relates to matters arising out of amendment, the Court would always condone the delay in filing the appeal under section 5 of the Limitation Act. No question of condoning the delay would, however, arise in case the appeal, though filed after amendment of the decree, relates to matters not covered by amendment. I am fortified in the view I have taken by a Full Bench decision of Patna High Court in *Golab and others* v. *Janki Kuer* (1). Mullick, J., with whom Sultan Ahmed, J, agreed, observed:—

> "Whether there is sufficient cause (under section 5 of the Limitation Act) for extension must depend on the circumstances of each individual case. If the amendment has no relation to the grounds upon which the validity of the decree is sought

(1) A.I.R. 1920 Patna 622.

to be challenged in appeal, such appeal should not be admitted out of time. On the other hand, if the grounds on which the appeal is based are intimately connected with the amendment of the decree, or if the grounds are directed against the decree only in so far as it has been amended, the Court should exercise in its favour the discretion vested in it by para 2, section 5, Limitation Act."

A Division Bench of Madras High Court (Wadsworth and Rajamanner, JJ.), also went into the question in *Batchu Venkatarao* v. *Surneedi Sathiraju and others* (2) and observed:—

"If the amendment is not the reason for the grievance of the appellant, there is clearly no reason for allowing the appellant to calculate limitation from the date of the amendment, rather than from the date of the original decree; but if the appellant was not aggrieved by the original decree, but is aggrieved by the decree as amended, logically and equitably time for the appeal should run from the date of the decree as amended."

Mr. Sultan Yar Khan on behalf of the appellant has referred to *Aditya Kumar Bhattachrjee* v. *Abinash Chandra Mukhopadhya and others* (3), wherein it has been held that after the amendment of the decree, the decree to be appealed aganist is the amended decree and not the original decree. The dictum laid down in the above case in no way militates against the view I have taken in the matter.

The appeal, consequently, fails and is dismissed, but in the circumstances I leave the parties to bear their own costs.

B. R. T.

(2) A.I.R. 1946 Mad. 291.
(3) A.I.R. 1931 Cal. 323.