M/s. Daljeet and Co. Private Limited
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Falshaw, C.J.

award. I consider it a fit case in which the parties may be left to bear their own costs.

HARBANS SINGH, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

GOBINDA,—*Appellant*

versus

ARJAN AND OTHERS,—*Respondents*

Regular Second Appeal No. 528 of 1957.

1963

Dec., 2nd.

Code of Civil Procedure (V of 1908)—Section 152—Appeal from a decree filed—Decree corrected thereafter—No appeal filed from corrected decree—Appeal from original decree—Whether competent.

Held, that the real test to determine whether it is the original decree or the amended decree from which an appeal has to be filed is to see whether the first decree had been substituted by the second one. Section 152 of the Code of Civil Procedure in reality refers only to correction of a decree and not to an amendment. Where, therefore, a correction is made at the instance of one of the parties after the appeal had been filed from the original decree and it does not in substance alter the nature of the decree, the appeal from the original decree was competent and it was not necessary to file an appeal from the corrected decree.

Regular Second Appeal from the decree of the Court of Shri G. K. Bhatnagar, Senior Sub-Judge, with Enhanced Appellate Powers, Hissar, dated the 29th day of January, 1957, modifying on the plaintiff's appeal that of Shri Rampal Singh, Sub-Judge, 1st Class, Hissar, dated the 8th May, 1956.

GANGA PARSHAD JAIN, ADVOCATE, for the Appellant.

FAQIR CHAND MITTAL, ADVOCATE, for the Respondent.

ORDERS

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—This appeal of Gobinda defendant arises out of a suit brought by the respondents Arjan, and Dev Chand for possession of land measuring 80 *kanals* and 8 *marlas* in village Hajampur, on basis of a pre-emptive right. The land had been sold by the vendor Mrs. Veronica Skinner, defendant No. 2, to Gobinda for a sum of Rs. 804 and the sale was sanctioned by a mutation on 28th of March, 1954. The plaintiffs founded their claim on a superior right of pre-emption as compared to the vendee as *biswedars* of the village. A decree for possession was granted only in respect of *khasra* No. 21/25/1 measuring 4 *kanals* on payment of Rs. 40. In respect of the other land, the suit was dismissed. From this decree of the Subordinate Judge passed on 8th of May, 1956, two cross-appeals were preferred both by the pre-emptors and the vendee. The area of the land in respect of which the decree was granted was enlarged to 36 *kanals* and 5 *marlas* and the pre-emption money was correspondingly raised to Rs. 441-8-0. The cross appeal of the vendee was dismissed.

From the decree of the Senior Subordinate Judge passed on 29th of January, 1957, Gobinda preferred this appeal (R.S.A. No. 528 of 1957) which was admitted in preliminary hearing by a learned Single Judge on 26th of August, 1957. The appellant claims possession of this land as a tenant and it is not disputed that in pursuance of the provisions of the Punjab Pre-emption (Amendment) Act, 1960 (Punjab Act No. 10 of 1960), he must succeed and the plaintiffs' suit dismissed *in toto*. The amended section 15 now vests the right of pre-emption in respect of agricultural land in the tenant who holds under tenancy of the vendor the land or property sold or a part thereof under sub-clause (Fourthly) of clause (a) of sub-section (1), and no such right vests in the *biswedars*.

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It is, however, contended by Mr. Mittal, the learned counsel for the respondents, that the appeal as filed cannot be entertained. In order to appreciate this objection, it is necessary to state that the decree appealed from had been amended on 1st of August, 1957. An application had been presented by the plaintiffs pre-emptors under section 152 and Order 47, rule 1 of the Code of Civil Procedure that the decree which had been passed by the lower appellate Court for possession of 36 *Kanals* and 5 *marlas* should have been made on payment of Rs. 362.8 and not Rs. 441.8. The Court of the Senior Subordinate Judge readily acceeded to the contention raised by the plaintiffs and treating it as a clerical and patent error in calculation modified the decree accordingly. The decree was ordered to be drawn up accordingly by order of the Court passed on 1st of August, 1957. It is urged by Mr. Mittal that no appeal having been preferred from the amended decree the relief cannot be granted to the vendee-appellant. It is submitted that the appeal which was filed in this Court on 4th May, 1957 and admitted on 26th of August, 1957, cannot be entertained as the decree appealed from subsists no longer. Concededly, no appeal has been filed from the amended decree.

Section 152 of the Code of Civil Procedure empowers the Court to correct all clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission at any time either of its own motion or on the application of any of the parties. Mr. Mittal contends on the basis of a Division Bench authority of Suhrawardy and Jack JJ. in *Sm. Saudamini Das* v. *Nabalak Mia Bhuiya and others* (1), that if a decree is amended

(1) A.I.R. 1931 Cal. 578.

the decree to be appealed against is the amended decree and not the original decree.

Mr. Ganga Parshad Jain for the appellant submits that the decree in substance was for possession of 36 *Kanals and* 5 marlas of land. The amount which was to be paid by the pre-emptors seems to have been wrongly calculated in the original decree passed by the lower appellate Court and on a motion for amendment the change was made by the Senior Subordinate Judge. It is urged by Mr. Jain that so far as the relief claimed and the amount of court-fee payable on appeal are concerned, the amendment in the decree did not make any difference. The vendee claimed that the entire suit should have been dismissed and the amendment which was introduced at the instance of the plaintiffs, did not make the slightest difference to the appeal filed by the vendee. It is argued that the time began to run for purposes of the appeal so far as the appellant was concerned from the date of the unamended decree as the amendments which were later made, did not affect him at all. Reliance has been placed on *Satya Rajan Nag* v. *Kshitish Chandra Pal* (2), which is a Single Bench authority of Suhrawardy, J. that:—

> "If a party who is not affected by subsequent proceedings wants to appeal against the decree the period must be computed from the date when the judgment is pronounced or the decree signed".

and the amendment of the decree or addition made in it not affecting an appealing party would not make any difference in computing the period of limitation.

A case which is more in point is a Division Bench authority of Venkatasubba Rao and Abdur Rahman

(2) A.I.R. 1924 Cal. 898.

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JJ. in *Pakkiri Muhammad Rowther* v. *L. Swaminatha Mudaliar* (3), where it was held that a "mere correcting of an error arising from accidental slip does not bring into existence a fresh decree, more so when the Court rectifying the error purports to act under section 152, and corrects the error without issuing notice to the party who is likely to be affected prejudicially by its order".

In the instant case, the Court of the Senior Subodinate Judge, on examination of the application under section 152, found a patent error in calculation and corrected it. No other party but the plaintiffs were interested in the amendment which was made without any notice to the other parties. No fresh decree in effect was brought into existence as a result of the rectification made by the Court.

The real test to determine whether it is the original decree or the amended decree from which an appeal has to be filed is to see whether the first decree had been substituted by the second one. Section 152 of the Code of Civil Procedure in reality refers only to correction of a decree and not to an amendment. Where, therefore, a correction is made at the instance of one of the parties and it does not in substance alter the nature of the decree, the appeal must be from the original decree and not the corrected one. I am, therefore, of the opinion that there is no force in the preliminary objection and the appeal was correctly filed. As there is nothing to be urged on merits on behalf of the respondents, this appeal must be allowed and the suit of the plaintiffs dismissed. As the success of the appeal is based on legislation which was enacted after the filing of the appeal, there would be no order as to costs.

K.S.K.

(3) A.I.R. 1938 Mad. 573.