

REVISIONAL CIVIL.

*Before Bhandari, C. J.*TARSEM SINGH AND OTHERS,—*Petitioners.**versus*SHRIMATI JAGINDRO AND OTHERS,—*Respondents.*

Civil Revision No. 422 of 1956.

*Code of Civil Procedure (V of 1908)—Section 152—
Power to amend decree—When to be exercised—Amend-
ment—Object of.*

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Held, that the decree is a formal document which must be drawn up in accordance with some decision of a Court, for a finding in itself is not a decree. If it is drawn up in conformity with the judgment, the Court has no power to order its amendment; but if it is not in harmony with the judgment, the Court has no alternative but to rectify the mistake which has been committed. The object of allowing amendments is to provide a remedy for casual omission or negligence of ministerial officers of the Court in preparing decrees of Courts even though they bear the signatures of the presiding officers concerned. An amendment is allowed on the assumption that the Court or the officer of the Court, who was charged with the preparation of the decree, has disregarded the law and the presumed order of the Court by issuing a decree which does not conform to the judgment or is defective in some other respect. As the power to amend is exercised for the promotion of justice, it should be exercised liberally so as to make the decree conform to the judgment on which it is founded. In exercising the power the Court does no more than what would have been done by it or the officer concerned, had the Court or the said officer performed his original duty. Amendment will not be allowed if it is not in the furtherance of justice. As the object of an amendment is to harmonise the decree with the judgment sought to be enforced by it, the test for deciding whether an amendment should be allowed is whether the decree represents the intention of the Judge who made it.

Petition under section 43 of the Punjab Courts Act, 1918, for revision of the order of Shri P. D. Sharma, Additional District Judge, Hoshiarpur, Camp, Dharamsala, dated

8th August, 1956, refusing to amend the decree granted by Shri J. N. Kapur, District Judge, Hoshiarpur, on 3rd April, 1954, which affirmed that of Shri Mohinder Singh, Senior Sub-Judge, Hoshiarpur, dated 18th January, 1954.

H. S. GUJRAL, for Petitioner.

Y. P. GANDHI, for Respondent.

JUDGMENT

Bhandari, C. J. A. N. BHANDARI, C. J.—This petition raises the question whether the learned District Judge was justified in dismissing an application for the amendment of a decree.

The allotment of a plot of land in favour of one Shrimati Jogindro, a displaced person from the West Punjab, was cancelled by the Custodian of Evacuee Property on the ground that the allottee had left no land in Pakistan on the basis of which the allotment could have been made. Jogindro challenged the correctness of this decision by means of an action in a Court of law and claimed relief on two grounds, namely (1) that she was an owner of a plot of land situate in Pakistan, and (2) that the allotment was cancelled without her being afforded a reasonable opportunity of being heard. The trial Court found in favour of the plaintiff and granted her the decree prayed for. The learned District Judge, Mr. J. N. Kapur, to whom an appeal was preferred refrained from deciding whether the land in Pakistan belonged to the plaintiff or to the defendants, for this question had to be decided by the Custodian of Evacuee Property and not by a civil Court. He held, however, that as no notice was served on the plaintiff before the order of cancellation was made, the order of cancellation could not be supported. In this view of the case he upheld the order of the

trial Court and dismissed the appeal. In paragraph 4 of his order he observed as follows:—

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“Now the learned Senior Subordinate Judge held that no notice was served on the plaintiff respondent and as such the Rehabilitation Department had no right to cancel the allotment. It is on the basis of this finding that a decree was granted to the plaintiff.....”

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The concluding paragraph of his judgment runs as follows:—

“I accordingly dismiss this appeal and uphold the judgment and decree of the learned Senior Subordinate Judge. The effect of this will be that the parties will have to go again before the Custodian and have the matter settled between themselves as to whether the land should be allotted to the appellant-defendants or to the plaintiff respondent”

The office of the District Judge thereupon drew up a decree which was in the following terms:—

“This appeal coming on for hearing on the 3rd day of April, 1954, before me (Shri Jagdish Narain Kapur, District Judge, Hoshiarpur) in the presence ofit is ordered that the appeal be dismissed and the judgment and decree of the lower Court, dated the 18th January, 1954, by which he granted a decree in favour of the plaintiff respondent against the defendants-appellants for the declaration as prayed is affirmed.”

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No mention was made in the body of the decree that the order of the trial Court had been upheld on one ground only, namely that Jogindro had not been afforded an opportunity of being heard.

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As this decree did not conform to the judgment intended to be enforced by it, the defendants requested Mr. P. D. Sharma (who had succeeded Mr. J. N. Kapur as District Judge of Hoshiarpur) to amend the decree under the provisions of sections 151 and 152 of the Code of Civil Procedure and to bring it into accord with the judgment delivered by his predecessor. Mr. Sharma was unable to accede to this request as he was of the opinion that the decree was in accordance with the judgment of Mr. Kapur. The defendants have now come to this Court in revision.

Section 2 of the Code of Civil Procedure declares that the expression "decree" shall mean the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. It is a formal document which must be drawn up in accordance with some decision of a Court, for a finding in itself is not a decree, *Mst. Chanli alias Subhadra Devi v. Mt. Meghoo and others* (1). If it is drawn up in conformity with the judgment, the Court has no power to order its amendment, *Ram Purshad v. Lauhri Mal and others* (2), *Nirendra Chandra Bhattachary v. Digendra Nath De* (3), but if it is not in harmony with the judgment, the Court has no alternative but to rectify the mistake which has been committed. The object of allowing amendments is to

(1) A.I.R. 1945 All. 268.

(2) A.I.R. 1927 Lah. 403.

(3) A.I.R. 1926 Cal. 1100.

provide a remedy for casual omission or negligence of ministerial officers of the Court in preparing decrees of Courts even though they bear the signatures of the presiding officers concerned. An amendment is allowed on the assumption that the Court or the officer of the Court, who was charged with the preparation of the decree, has disregarded the law and the presumed order of the Court by issuing a decree which does not conform to the judgment or is defective in some other respect. As the power to amend is exercised for the promotion of justice, it should be exercised liberally so as to make the decree conform to the judgment on which it is founded. In exercising the power the Court does no more than what would have been done by it or the officer concerned, had the Court or the said officer performed his original duty. Amendment will not be allowed if it is not in the furtherance of justice. As the object of an amendment is to harmonise the decree with the judgment sought to be enforced by it, the test for deciding whether an amendment should be allowed is whether the decree represents the intention of the Judge who made it, *Tribeni Singh v. Mohamed Musharraf Ali* (1), *In re Raj Bahadur Singh v. Raj Bachan Singh* (2).

After a careful consideration of all the facts and circumstances of the case I entertain no doubt in my mind that Mr. Kapur did not intend to affirm the decree of the trial Court in so far as the title to the land in Pakistan was concerned. He intended merely to uphold the decision of the trial Court only on the question of want of notice to the plaintiff before the order of cancellation was made. He omitted, however, to give effect to this intention, for he appears to have been under the

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(1) A.I.R. 1931 Oudh. 422.

(2) A.I.R. 1942 Oudh. 226.

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erroneous impression that the learned Subordinate Judge had decreed the plaintiff's claim on the ground only that the order of cancellation was passed without hearing the plaintiff. I am of the opinion that the decree which was prepared in his office did not give effect to his intention even if it purports to have been signed by him. Let the decree be modified accordingly.

Nothing herein contained should be construed to be an expression of opinion on the somewhat difficult question as to whether the plaintiff did or did not own any land in Pakistan in lieu of which she claimed an allotment under the provisions of the Administration of Evacuee Property Act. The question of title was not decided by the District Judge.

For these reasons I would accept the petition, set aside the order of Mr. Sharma and direct that the decree be amended so as to bring it into conformity with the decision of Mr. Kapur. There will be no orders as to costs.

APPELLATE CIVIL

Before Chopra and Gosain, JJ.

F. NANAK CHAND RAMKISHAN DAS OF HODEL

AND OTHERS,—*Plaintiffs-Appellants*

versus

LAL CHAND AND OTHERS,—*Defendants-Respondents*

Civil Regular Second Appeal No. 196 of 1950, with Cross-Objections.

Negotiable Instruments Act (XXVI of 1887)—Sections 30, 91, 92, 93 and 106—Bills of Exchange payable after sight, on a fixed date and at sight—Whether require to be presented for acceptance—Bill dishonoured on presentment—Notice of dishonour—Whether necessary to be given to the

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