

Custodian
Evacuee Pro-
perty, Punjab,
Jullundur
v.
Parbhu Dayal
and others
———
Mahajan, J.

which are binding on me sitting in Single Bench, the civil Court had no jurisdiction to decide the suit. I have gone through these authorities and they have no applicability whatever to the facts of the present case. All that has been held in both these decisions is that it is the Custodian alone who can decide if a person is an evacuee and whether a particular property is evacuee property. I have already said that this is so. But then none of these cases goes on to lay that it is within the competence of the Custodian in a dispute where he is arrayed like any other party to a litigation to be a judge in his own cause or to decide the question of adverse possession or limitation. As a matter of fact in *Gurparshad's case* (1) it was observed—

“It may be that *civil Courts* are not debarred from deciding some of these questions if properly raised in those Courts.”

For the reasons given above, this appeal fails and is dismissed with costs.

K. S. K.

LETTERS PATENT APPEAL

Before A. N. Bhandari, C. J., and G. L. Chopra, J.

SETH MAHADEV PARSHAD JAIPURIA,—Appellant.

versus

MST. MUNGI AND ANOTHER,—Respondents.

Letters Patent Appeal No. 55 of 1951.

1959
July 27th.

Code of Civil Procedure (V of 1908)—Section 99 and Order 48, Rule 3—Decree not drawn up in the form given in the appendix—Effect of—Decree—Contents of.

Held, that Rule 3 of Order 48 of the Code of Civil Procedure provides that the forms given in the appendices,

(1) A.I.R. 1959 Punj. 230

with such variation as the circumstances of each case may require, shall be used for the purposes therein mentioned. It is desirable that a decree should be drawn up in the form prescribed in the Code of Civil Procedure; but a failure on the part of the Court to follow strictly the language of the form is not necessarily fatally defective. The validity of a decree depends upon the authority by which it is issued and the mandate that it contains and not upon the extent to which the language prescribed by the Code has been reproduced. The substantial effect intended by the decree should be looked to rather than to the precise form of words which the Court has used. Substantial conformity with the language of the form is sufficient. The law does not favour frivolous objections in regard to the form of the decree, for section 99 of the Code of Civil Procedure declares that no decree shall be reversed or substantially varied in appeal on account of any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

Held, that a decree must show on what judgment it is based, for and against whom it is issued and the amount to be taken from the latter for the benefit of the former. A mortgage decree must further direct that the mortgaged property be sold and that the money realised by such sale shall be duly applied for payment of the amount payable to the plaintiff under the preliminary decree. If, therefore, the decree specifies the precise amount which is to be recovered from the judgment-debtor and if it directs that the recovery shall be made by the sale of the mortgaged property, the intention of the Court is not left in doubt, even though the precise language used by the Code has not been employed. Legal justice should be determined by fixed rules and positive statutes and not by the abstract and varying notions of equity entertained by each individual, but merely technical objections not affecting the merits of the case should not be allowed to defeat justice when the provisions of law have been substantially complied with.

Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment of Hon'ble Mr. Justice J. L. Kapur, dated the 30th day of March, 1951, passed in Execution First Appeal No. 174 of 1949 reversing that of Shri

Chajju Ram, Senior Sub-Judge, Delhi, dated the 20th August, 1949, ordering sale.

D. D. CHAWLA, for Appellant.

GURBACHAN SINGH, for Respondent.

JUDGMENT

Bhandari, C. J.

Bhandari, C.J.—This appeal must, in my opinion, be allowed as it seems to me that the learned Single Judge has taken a view of the law which cannot possibly be supported.

A preliminary mortgage decree in a sum of Rs. 16,484-6-0 was passed against the judgment-debtor on the 16th December, 1944 and a final decree was passed against him on the 8th April, 1946. These decrees were later confirmed by this Court on the 15th February, 1948 by means of a composite order which was in the following terms:—

“It is ordered that the appeal be accepted and the preliminary and the final decrees of the Senior Subordinate Judge, Delhi, dated the 16th of December, 1944, and the 8th of April, 1946, respectively as described overleaf be and the same are hereby modified by decreasing the decretal amount by a sum of Rs. 1,000. The plaintiff shall now be entitled to recover a sum of Rs. 14,200 by sale of the mortgaged property. Future interest for a period of four months shall be computed at the rate of $7\frac{1}{2}$ per cent per annum and thereafter at the rate of 6 per cent per annum. In every other respect the preliminary decree and the final decree be confirmed.”

The decree-holder applied for the execution of the decree on the 31st August, 1948 and a proclamation for the sale of the mortgaged property was made on the 16th May, 1949. On the 26th May, 1949 the judgment-debtor presented an application to the executing Court in which he objected to the execution of the decree on the ground that there was in fact no mortgage decree which could be executed. The sale of the mortgaged property took place on the 13th June, 1949 and the judgment-debtor's objection to the execution of the decree was dismissed by the executing Court on the 20th August, 1949.

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The judgment-debtor was dissatisfied with the order of the executing Court and preferred an appeal to this Court which came up for hearing before a learned Single Judge of this Court. The learned Single Judge set aside the order of the Executing Court on two grounds, namely, (1) that the executing Court had failed to dispose of the objection of the judgment-debtor even though it was taken before the confirmation of the sale, and (2) that the decree passed by this Court was not drawn up in accordance with the provisions of the Code of Civil Procedure and the forms given therein. It is against this order that the present appeal has been filed under clause 10 of the Letters Patent.

The form prescribed under Order 34 rule 5 of the Code of Civil Procedure runs as follows:—

“It is hereby ordered and decreed that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale the plaintiff shall produce before the Court..... all documents in his possession or power relating to the mortgaged property.”

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Rule 3 of Order 48 of the Code of Civil Procedure provides that the forms given in the appendices, with such variation as the circumstances of each case may require, shall be used for the purposes therein mentioned. It is desirable that a decree should be drawn up in the form prescribed in the Code of Civil Procedure; but a failure on the part of the Court to follow strictly the language of the form is not necessarily fatally defective. The validity of a decree depends upon the authority by which it is issued and the mandate that it contains and not upon the extent to which the language prescribed by the Code has been reproduced. We should look rather to the substantial effect intended by the decree than to the precise form of words which the Court has used. Substantial conformity with the language of the form is sufficient. The law does not favour frivolous objections in regard to the form of the decree, for section 99 of the Code of Civil Procedure declares that no decree shall be reversed or substantially varied in appeal on account of any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

The principle propounded in section 99 has been applied in several cases. In *Chhagan Lal Sakar Lal Wani v. Jayaram Deoraj Thakar and others* (1), a question arose whether a preliminary decree which was not made final was capable of being executed. It was held that though the final decree had not been formally drawn up on the terms of the preliminary decree which had been made absolute, that decree coupled with the order might be taken under the circumstances to be the final decree and the omission to draw a formal final decree could be condoned under

(1) I.L.R. 51 Bom. 125

section 99 of the Code of Civil Procedure. In the course of their order the learned Judges observed:—

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“In its ultimate analysis, it is only a formal defect. It is conceivable that a formal defect of this nature may lead to a real difficulty in the way of execution; and it is necessary to see that even such a formal defect does not creep in, and that a formal decree is drawn up when the decree is made final. But under the circumstances of this case, we are not prepared to hold that there is no executable decree. The result of allowing a contention of this nature at this distance of time, will be that a decree will have to be drawn up formally now and a fresh beginning will have to be made in the way of execution after the lapse of so many years. That is a result which should be avoided so far as it is legally possible to do so..... It seems to us that an omission of this kind may be condoned where the terms of the decree sought to be executed are otherwise ascertained or clearly ascertainable, as they are in this case. Section 99 of the Code of Civil Procedure would cover such an error or irregularity, as under circumstances such as we have in this case, it does not affect the merits of the case or the jurisdiction of the Court.”

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A similar view was taken in *Banu Mal v. Paras Ram and others* (1) and *Bashisht Narain Singh v. Ram Pukar Singh and others* (2). Technical objections

(1) 92 I.C. 254

(2) A.I.R. 1942 Pat. 343

Seth Mahadev to the form in which the decrees were drawn up
 Parshad Jaipuria were overruled in *Mancherji Harmusji v. Thakar-*
v.
 Mst. Mungi and *das Harkisondas (1), Dhanpat Rai v. Nathe Khan*
 another *and others (2), and Lala Moti Ram Khatri v.*
 Bhandari, C. J. *Basheshar Nath Khatri and others (3).*

A decree must show on what judgment it is based, for and against whom it is issued and the amount to be taken from the latter for the benefit of the former. A mortgage decree must further direct that the mortgaged property be sold and that the money realised by such sale shall be duly applied for payment of the amount payable to the plaintiff under the preliminary decree. If, therefore, the decree specifies as in the present case, the precise amount which is to be recovered from the judgment-debtor and if it directs that the recovery shall be made by the sale of the mortgaged property, the intention of the Court is not left in doubt, even though the precise language used by the Code has not been employed. I agree that legal justice should be determined by fixed rules and positive statutes and not by the abstract and varying notions of equity entertained by each individual, but it must be remembered that merely technical objections not affecting the merits of the case should not be allowed to defeat justice when the provisions of law have been substantially complied with. It is unfortunate that although this decree was passed by this Court several years ago the decree-holder has not been able to recover a single penny on account of the wholly technical and frivolous objections which have been raised by the judgment-debtor.

For these reasons, I would accept the appeal, set aside the order of the learned Single Judge and

(1) 5 Bom. I.L.R. 389, 392

(2) A.I.R. 1926 Lah. 364, 365

(3) A.I.R. 1939 Peshawar 34

restore that the executing Court. The decree-
holder will be entitled to costs here and below.

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Chopra, J.—I agree.

B.R.T.

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APPELLATE CIVIL

Before D. K. Mahajan, J.

MANSHA RAM, *alias* MANSU,—Appellant.

versus

MILKHI RAM,—Respondent.

Regular Second Appeal No. 14 of 1955.

Code of Civil Procedure (V of 1908)—Section 11—
Consent decree—Whether and when acts as *res judicata*—
Hindu Law—Adoption—Giving of the boy to the adoptive
mother instead of the father—Whether makes adoption
invalid.

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Held, that a consent decree is as much *res judicata* as a decree obtained after contest though section 11 of the Code of Civil Procedure is not strictly applicable to consent decrees. But a consent decree can only operate as *res judicata* when the question raised in the subsequent suit was present to the minds of the parties, and was actually dealt with by the consent decree, i.e., when the consent decree actually settled the question.

Held, that to constitute a valid adoption under the Hindu law actual giving and taking of the boy is required and the placing of the boy in the lap of the adoptive mother instead of the father will not make the adoption illegal or invalid.

Regular Second Appeal from the decree of Shri Mohinder Singh, Senior Sub-Judge, with enhanced appellate powers, Hoshiarpur, dated the 13th October, 1954, affirming that of Shri O. P. Garg, Sub-Judge, 3rd Class,