or, in other words, there is no proximate and reasonable nexus between the activities of the petitioner and "public order". The petition is, therefore, dismissed.

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MEHAR SINGH, J.—I agree.

Mehar Singh, J.

D. K. MAHAJAN, J.—I agree.

Mahajan, J.

H. R. KHANNA, J.—I agree.

Khanna, J.

S. K. KAPUR, J.—I agree.

Kapur, J.

*B.R.T.*

APPELLATE CIVIL

*Before A. N. Grover, and Jindra Lal, JJ.*

SUBA SINGH AND OTHERS,—*Appellants.*

*versus*

SADHU SINGH AND ANOTHER,—*Respondents.*

**R.S.A. No. 755 of 1961.**

1965

August, 17th.

*Code of Civil Procedure (Act V of 1908)—S. 152 & O.47—Judgment or decree—When can be varied or modified under S. 152 and when under Order 47—Effect of variation or modification in each case on the appeal pending against the original decree.*

*Held,* that it will have to be seen in each case whether the procedure laid down by Order 47 of the Code of Civil Procedure for review was followed in a particular case and if it has been followed and an amendment has been ordered, as a result of the review proceedings, in the judgment or decree, an appeal would lie from the amended judgment or decree and the appeal filed from the original judgment or decree would become incompetent and cannot be heard. If, however, the correction of an error has been made under section 152 of the Code, then no fresh judgment or decree comes into existence and the appeal from the decree, as originally passed, would be perfectly competent as the correction of a mistake or an error under the provisions of section 152 does not supersede the original judgment or decree. All that the court does is to rectify a clerical error arising from an accidental slip or omission and it is the duty of the court to correct it whenever it comes to its notice or is brought to its notice by any of the parties. In case the intention of the Court is quite clear and if by some clerical error or omission that intention is left in doubt or not properly effectuated, then use can be made of the powers under section 152 and indeed the Court is bound to correct such errors or mistakes which fall within the ambit of

section 152. The considerations which prevail in entertaining a review petition and directing any amendment in a judgment or decree under the provisions contained in Order 47 are quite different. Where a judgment or decree is amended as a result of proceedings taken under Order 47, a new judgment or decree comes into existence and supersedes the original one but that cannot be said about any correction or amendment directed or made under section 152 of the Code.

*Case referred by the Hon'ble Mr. Justice A. N. Grover on 29th September, 1964 to a larger Bench for decision of an important question of law involved in the case and the case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice A. N. Grover and the Hon'ble Mr. Justice Jindra Lal on 17th August, 1965.*

*Regular Second Appeal from the decree of the Court of Shri Banwari Lal, 2nd Additional District Judge, Amritsar, dated the 1st day of February, 1961, affirming that of Shri S. C. Jain and Shri D. C. Aggarwal, Sub-Judge, Ist Class, Tarn Taran, dated the 11th February, 1960/3rd May, 1960, decreeing the plaintiff's suit against the defendant to the effect that the plaintiff would deposit Rs. 6,451.87 P. in that Court on or before 11th May, 1960, and leaving the parties to bear their own costs failing which his suit would stand dismissed with costs and reviewing the aforesaid order to the effect that the plaintiff would deposit a sum of Rs. 1,651.87 Paise by the date fixed on the condition that the property in his hand would remain subject to mortgage with Teja Singh for Rs. 4,800.*

N. S. Chhachhi, Advocate, for the Appellants.
A. L. Bahri, and R. N. Narula, Advocates, for the Respondents.

JUDGMENT

The judgment of the Court was delivered by:—

Grover, J.

Grover, J.—The point for determination in this appeal is whether the lower appellate Court rightly declined to entertain an appeal against a decree made by the trial Court in a pre-emption suit in which an amendment or correction was later on ordered to be made, the appeal having been filed against the decree as originally framed and not from the decree as amended or corrected.

It is necessary to state the facts at some length. Mst. Jio, widow of Asa Singh, sold certain agricultural land measuring 57 *kanals* and 7 *marlas* for Rs. 10,000 to Suba Singh and three others. Sadhu Singh, who claimed to be the real brother of Asa Singh filed a suit for the

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usual declaration that the sale was without consideration and necessity and was not binding on the plaintiff and other reversioners after the death of Mst. Jio. In the alternative he prayed that a decree be granted for possession by pre-emption on payment of Rs. 3,000, that being alleged to be the market value of the property. The suit was contested by the vendees and the following issues were framed on the pleadings of the parties:—

(1) Is the suit for declaration in view of section 14 of the Hindu Succession Act by plaintiff competent ?

(2) Has the plaintiff a better right of pre-emption than vendees ?

(3) Was the sale consideration of Rs. 10,000 actually paid or fixed in good faith ?

(4) What is the market value of the suit land ?

(5) Is the suit bad for non-joinder of Teja Singh ?

(6) Relief.

On issue No. 1 it was held that the plaintiff did not have a *locus standi* to ask for a declaration after coming into force of the Hindu Succession Act. On issue No. 2, there was hardly much contest and it was held that the plaintiff had a better right of pre-emption. With regard to issue No. 3 it will be useful to reproduce the following portions of the judgment of the trial Court :—

"13. This is the main issue and the sale consideration of Rs. 10,000 is said to be paid as follows:—

(a) Rs. 4,800 for paying it over to previous mortgagees on the basis of their mortgage deeds, dated 12th March, 1957 (Rs. 1,800) and 19th December, 1951, Rs. 3,000 in favour of Teja Singh, father of defendants Nos. 1 to 4.

(b) Rs. 600 for paying it over to Teja Singh, on the basis of the pronote, dated 2nd January, 1958.

(c) Rs. 600 for paying over to Dharam Singh,—*vide* pronote, dated 2nd December, 1957.

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(d) Rs. 500 for paying over to Shangara Singh,—*vide* pronote, dated 20th June, 1956.

(e) Rs. 2,000 paid as earnest money,—*vide* receipt, dated 27th January, 1958.

(f) Rs. 1,000 paid to the vendor,—*vide* receipt D. 11, dated July, 1958.

(g) Rs. 500 paid to vendor for registration expenses.

Total:—Rs. 10,000.

14. There is not much dispute as regards item (a) and (f). This amount has been actually proved to have been paid,—*vide* receipts and the statement of Jio. These items are upheld."

The trial Court held on items (b), (c), (d) and (e) that they had not been proved and, therefore, they were disallowed. As a Commissioner had been appointed for determining that market value, the trial Court accepted his report and fixed the market value at Rs. 6,451.87 *paisas*. The concluding and the material portion of the judgment delivered on 11th February, 1960, by Shri S. C. Jain, Sub-Judge, 1st Class, who had tried the suit was as follows:—

"In view of my above findings, I decree the plaintiff's suit against the defendants and he will deposit Rs. 6,451.87 nP. in this Court on or before 11th May, 1960, failing which his suit shall stand dismissed *ipso facto* with costs."

On 3rd March, 1960, the plaintiff filed an application which was headed as one for review of the order and the decree, dated 11th February, 1960, and the provision under which it was filed was stated to be Order 47, Civil Procedure Code. In this application it was stated that out of the sale consideration the vendees had retained Rs. 4,800 for payment of Teja Singh the mortgagee and since that amount had not been paid to the mortgagee, it had to be deducted out of the amount of Rs. 6,451.87 *paisas* which had been determined to be the pre-emption money, and, therefore, the judgment and decree should be reviewed and they should be corrected by inserting that a sum of Rs. 1,651.87 *paisas* only was payable by the

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plaintiff. The Ahlmad made a report, dated 7th March, 1960, in which he said that since the amount of Rs. 4,800 was lying in trust for payment to the mortgagee, there was no question of the amount of Rs. 4,800 being deposited in Court and thus only Rs. 1,651.87 had to be deposited by the plaintiff for the purpose of the pre-emption decree. The Court made an order on that day directing a notice to the opposite party for 16th March, 1960. The vendees, who were apparently unaware of the aforesaid review application instituted an appeal in the Court of the District Judge, on 8th March, 1960, in which copies of the judgment as delivered on 11th February, 1960, and the decree as framed pursuant to that judgment were filed. In the review application the Court ordered on 16th March, 1960, that the matter should come up on 30th March, 1960. It appears that the hearing of the application was postponed on certain dates which need not be mentioned. On 16th April, 1960, the vendees filed a reply in Urdu in which it was stated *"Darkhast Qatai Ghalat Aur Khilaf-i-Waqiaat Hai. Hukum Adalat Main Koi Ghalti Qitabat Nehin Hai Aur Na Hi Badiul-Nazar Main Is Main Koi Ghalti Hai"*. Translation into English would mean "The contents of the application are absolutely wrong and against the facts. There is no error of writing (literal translation) in the order passed by the Court, nor is there any apparent mistake in it". It was further pleaded that the judgment of the Court was based on facts and could not be reviewed and the plaintiff could file an appeal.

Shri S. C. Jain had been transferred by then and his successor Shri D. C. Aggarwal recorded an order on 3rd May, 1960, the material part of which is reproduced below:—

> "The plaintiff-applicant has applied that a sum of Rs. 4,800 kept in trust with the vendees for payment to Teja Singh, mortgagee has not been paid up by the defendant-vendees. The mortgage-deeds in favour of Teja Singh, son of Jowala Singh, in consideration of Rs. 4,800 are Exhibits D. 2, dated 19th December, 1951 and D. 3, dated 21st March, 1957. I have read the statement of Suba Singh vendee. He says that the sum of Rs. 4,800 has not yet been paid up.

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The order of the learned Sub-Judge reflects a mistake which is quite apparent from the record and it seems that the mistake was committed by inadvertence. The order is reviewable by me even though I am only a successor of Shri S. C. Jain since a notice according to Order 47, Rule 4, Civil Procedure Code, had been issued by him to the other party.

The learned counsel for the respondent has nothing to say as to why the application should not be granted. Consequently, the order, dated 11th February, 1960, is reviewed and the plaintiff is ordered to deposit a sum of Rs. 1,651.87 by the date already fixed on the condition that the property in his hand will remain subject to mortgage with Teja Singh for Rs. 4,800."

As a result of this order the following note was inserted:—

*Note.*—"The order, dated 11th February, 1960, is reviewed and the plaintiff is ordered to deposit a sum of Rs. 1,651.87 nP.. by the date fixed on the condition that the property in his hand will remain subject to mortgage with Teja Singh for Rs. 4,800".

This note was signed by Shri D. C. Aggarwal, the date under the signatures being 3rd May, 1960.

The appeal which had been instituted by the vendees on 8th March, 1960, came up for hearing before the Second Additional District Judge, Amritsar, who by his order, dated 1st February, 1961, dismissed it, on the ground that after the order of review the original judgment and decree had ceased to exist and, therefore, the appeal which had been filed could not be entertained.

When the matter came up before me sitting singly a number of authorities were cited some of which have been mentioned in my referring order and as there was a conflict of judicial opinion on the point. I directed that it should be disposed of by a Division Bench and that is how the appeal has now come up before us for hearing.

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The argument which has been presented by Mr. N. S. Chhachhi, who appears for the vendees, is that although the application which was filed by the plaintiff on 3rd March, 1960, was labelled as one having been made under Order 47, Civil Procedure Code, for review of the judgment and the decree which had been passed by Shri S. C. Jain, on 11th February, 1960, it should be treated as an application under section 152 of the Code of Civil Procedure, as there was only a clerical mistake in the judgment and the decree which arose from an accidental slip or omission and it could be corrected by the Court either of its own motion or on the application of any of the parties. It is submitted that in any case if the matter fell strictly under section 152 of the Code of Civil Procedure, then the order of Shri D. C. Aggarwal, dated 3rd May, 1960, should be deemed to have been made under section 152 and not under Order 47, of the Code. It has been pointed out that Shri S. C. Jain in his judgment while giving his decision on issue No. 3, the material portion of which has been set out earlier, clearly mentioned that the amount of Rs. 4,800 had been retained by the vendees for payment to the previous mortgagee and it was also stated in para 14 of the judgment that there was hardly any dispute with regard to that item and the same was upheld. If that was so, it is said, that while mentioning the figure which was to be deposited by the plaintiff as the preemption money Shri Jain by sheer accidental slip or omission gave the total figure as Rs. 6,451.87 and not Rs. 1,651.87 after deducting the aforesaid amount of Rs. 4,800. The amendment which was later on made was merely a correction by the Court of its own error which was clerical and there was no question of any review of the judgment being made under Order 47, Civil Procedure Code.

The position taken up on behalf of the plaintiff by Mr. A. L. Bahri is that the order of Shri D. C. Aggarwal was made on review in accordance with the provisions contained in Order 47, and therefore the original judgment and the decree stood superseded by the amended judgment and the amended decree against which alone an appeal could have been filed. It is also urged that even if it be assumed that the amendment could be made in exercise of the powers conferred by section 152 of the Code of Civil Procedure, nevertheless the judgment and the decree

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which could be appealed from were only those which came into existence after the amendment or correction. The earliest case which has been cited is a decision of White and Maclean JJ., in *Joykishen Mookerjee* v. *Avtaoor Rohoman* (1). In that case the Subordinate Judge corrected the judgment and the decree regarding costs only. The matter was taken up in appeal to the District Judge. He treated the order of the Sub-Judge as one rejecting the application for a review, and, therefore, as giving the appellants no fresh point of departure as regards the period of limitation. In other words he read the order of Sub-Judge as one substantially rejecting the application for a review and allowing what was considered to be a clerical mistake to be amended. The learned Calcutta Judges were of the view that although the petition was allowed on a minor ground but the application which was one for a review, was not the less for grant of the review, because it was allowed on one ground only and that a comparatively insignificant one. Referring to the argument that the mistake in the original decree was such as the Subordinate Judge might have amended under section 206 of the Code (equivalent to the present section 152) without granting a review of his judgment, it was said that the Subordinate Judge had not in point of fact proceeded under that section but had dealt with the application as it was one for a review of judgment. It was, therefore, held that the appellants were entitled to have the benefit which the procedure adopted by the Subordinate Judge gave them and to treat the order as made upon review of judgment. In the next case *Brojo Lal Rai Chowdhury* v. *Tara Prasanna Bhattachari* (2), the judgment was delivered by Rampini and Mookerjee, JJ., and what had happened in that case was that the Subordinate Judge had delivered a judgment on 31st January, 1901, in a mortgage suit. The decree was drawn up on 28th February, 1901. On 28th September, 1901, the decree was made absolute. On 3rd June, 1902, an application was presented by the defendant for amendment of the decree upon the allegation that the decree was incorrectly drawn up and was not in accordance with the judgment. On 12th July, 1902, the decree was directed to be amended and on 3rd September, 1902, the plaintiff preferred an appeal before the High Court against the amended decree.

(1) I.L.R. 6 Cal. 22.
(2) 3 Cal. L.J. 188.

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It was held that the appeal against the amended decree was perfectly competent but so far as the limitation was concerned, the decree, though it was amended on 12th July, 1902, must be taken to bear the date 31st January, 1901 as under section 205 of the Code, as it stood then, the decree in a suit must bear the same date on which the judgment was pronounced. Reference was made to *Pydel* v. *Chathappan* (3), where the learned Judges pointed out that in the contemplation of law, an amended decree must be taken as in force from the date of the original decree, as there is a well-founded distinction between a case of amendment and a case of novation or substitution. The learned Judges further were of the opinion that though the appeal was filed after the period of limitation, it ought to be admitted in exercise of the powers conferred under section 5, para 2, of the Limitation Act. Reference in this case was made to the earlier decision in *Joykishen Mookerjee* v. *Avtaoor Rohoman* (1), and that decision seems to have been taken as supporting the view expressed in *Pydel* v. *Chathappan* (3).

In *Aditya Kumar* v. *Abinash Chandra* (4), it was held that if a decree is modified in review, to however slight an extent it may be, the modified decree is the final decree for the purpose of an appeal and the fact that no decree is drawn up or that decree was drawn up to the extent of the modification does not affect the question. Consequently an appeal against a decree anterior to review filed pending the review, without any appeal from the amended decree, is not competent. In this case reference was made to the decision in *Joykishen Mookerjee* v. *Avtaoor Rohoman* (1), *Brojo Lal Rai Chowdhury* v. *Tara Prasanna Bhattachari* (2), and *Menat Ali* v. *Amdar Ali* (5), for the view that even if the decree was amended on account of the clerical mistake, the period for appeal should be reckoned from the time of the amendment and preparation of the decree in pursuance thereof. The effect of granting an application for review was also considered, it being that the original decree is superseded and no appeal, therefore, could be filed against the original decree. In *Smt. Soudamini Das* v. *Nablak Mia Bhuiya* (6), the same view was reiterated.

(3) I.L.R. 14 Mad. 150.
(4) A.I.R. 1931 Cal. 323.
(5) 9 C.W. N. 605.
(6) A.I.R. 1931 Cal. 578.

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The Allahabad Court held in *Kanhaiya Lal* v. *Baldeo Prasad* (7), that where an application for review of judgment is granted and the decree was modified in important particulars and a new decree passed, the old decree stood entirely superseded. The following observations, however, in that case deserve notice:—

> "It is admitted that the application for review and the order passed thereon could not be treated as having been made under section 206, inasmuch as it was not an application to bring the decree in conformity with the judgment or to amend a clerical error."

The Allahabad decision was followed by the Punjab Chief Court in *Basheshar Nath* v. *Ram Kishan Das* (8), in which the order recorded was a very short one and all that has been stated is that the application for review had been accepted and the previous decree had been set aside and the case remanded. For that reason it was held that the decree appealed from no longer existed and the appeal against it could not be heard. Similarly in *Nawaz Ali* v. *Allu* (9), in which *Joykishen Mookerjee* v. *Avtaoor Rohoman* (1), was followed, all that was said was that the decree which had been passed had been reviewed and therefore limitation had to be reckoned from the date of the modified decree.

In *Vadilal* v. *Fulchand* (10), Jenkins C.J., delivering the judgment of the Bench indicated the various stages of procedure involved in a petition of review under section 623 of the old Code (Order 47, rule 1 of the new Code). According to the statement of the law by him the first stage commences with an *ex parte* application which the Court may either reject at once or may grant a rule calling on the other side to show cause why the matter should not be reviewed. In the second stage the rule may either be admitted or rejected and the hearing of the rule may involve to some extent an investigation into the merits. If the rule is discharged, then the case ends. If, on the other hand, the rule is made absolute, then the third stage is reached. The case is reheard on the merits and may

(7) I.L.R. 28 All. 240.
(8) 140 P.R. 1919.
(9) I.L.R. 4 Lah. 185.
(10) I.L.R. 30 Bom. 56.

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result in a repetition of the former decree or some variation of it. If there is a variation of the decree, the whole matter having been re-opened there is a fresh decree. In that case certain objections in execution of a decree had been made and an application was filed for review of that judgment under section 623 of the old Code. Notice was issued to the opposite party and the application for review was heard with the result that the Judge after disposing of certain technical objections proceeded to deal with the case on the merits and having done so, he rejected the application for review. An appeal was filed against the said order, dated 14th September, 1903, and the question was whether the appeal was competent against that order, because the only order from which an appeal could lie was the original order made on 20th December, 1902. It was held that since the application for review had been rejected no appeal would lie from the order, dated 14th September, 1903, and the proper procedure would have been to appeal from the order of 20th December, 1902.

In *Lachmibai and another* v. *Doulatram Devidas* (11), it has been said that where a decree passed against persons who are dead is amended on an application for review and a decree is passed against the legal representatives of the deceased and an appeal is filed against the first decree, the test in deciding whether the appeal has been correctly filed is not whether the error or accidental slip to be corrected in the first decree does or does not fall under section 152 of the Civil Procedure Code but whether for the first decree a second decree is substituted. Where it appears that the first decree has been substituted by a second one, an appeal against the first decree is not competent.

In *Pakkiri Muhammad Rowther* v. *L. Swaminatha Mudaliar* (12), the Madras Court decided a case in which the facts were these. The plaintiff alleging that he became the purchaser of the suit property sued the defendants for its possession. Their defence was that some amount was due to them and the trial Court over-ruled the plea and gave judgment for the plaintiff. The property was admittedly held in two distinct shares; one

(11) A.I.R. 1936 Sind 53
(12) A.I.R. 1938 Mad. 573.

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by defendant No. 1 and the other by his brother and his son defendants 2 and 3. Defendant No. 1 alone appealed without impleading defendants Nos. 2 and 3. The District Judge, reversed the trial Court's judgment and dismissed the suit. The second appeal was taken to the High Court. Meanwhile the plaintiff applied for review of the District Judge's decree in which one of the grounds taken was that the dismissal of the suit as against the second set of defendants was an error apparent on the face of the record. The learned Judges referred to the observations of Jenkins, C.J., in *Vadilal* v. *Fulchand* (10), about the various stages of a review application. The following passage from the judgment of Venkatasubba Rao, J., may be usefully reproduced:—

> "The question that arises is whether the order to be presently referred to, on the review application, was one passed in the second or in the third stage. As already said, the review was based on two grounds. So far as the petition prayed that the order dismissing the suit should be confined to defendant 1 alone, the relief asked for was granted. To this extent, though the Judge purported to act under the review provisions of the Code, he must in trust be deemed to have used his powers under section 152, Criminal Procedure Code. Notice was served on defendant 1 only but the order he made affected defendants 2 and 3 prejudicially and it is inconceivable that he would have made it without notice to them under the review chapter. No adverse order can be made under the review sections without notice to the party affected. On the other hand, the error which was rectified was, as the Judge later realised, due to an accidental slip and under section 152 that could be rectified as a matter of course without notice."

A good deal of emphasis was laid by the Madras Court on the provisions contained in Order 47, Rule 8, when an application for review is granted. At that stage the Court has the option either to rehear the case at once or adjourn it to a future date for hearing. But the Court is required, on making the order absolute, to make a note thereof in

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the register. No note had been made in the case which was being decided by the Madras Court that the review was granted. That was another reason why it was held that the order which had been made by the District Judge was not an order of review but had been made under section 152 of the Code.

As regards the correcting of an error arising from an accidental slip, the learned Madras Judges had no difficulty in holding that such a correction did not bring into existence a fresh decree. Reference was made in this connection to the observations made in *Pydel* v. *Chathappan* (3) and *Brojo Lal Rai Chowdhury* v. *Tara Prasanna Bhattachari* (2).

It is clear from the above discussion of the case law that the Calcutta Court has gone to the length of laying down that any kind of amendment or correction made in a judgment or decree irrespectively of whether it was made on review under Order 47, or under section 152 brings into existence a fresh judgment or decree and an appeal would be competent only from them. The Allahabad and the Lahore Courts had to deal with cases which were of a different nature and in which it appears that review application had been entertained and allowed. The approach of the Madras Court has been that it will have to be seen whether the procedure laid down by Order 47, for review was followed in a particular case and if it has been followed and an amendment has been ordered, as a result of the review proceedings, in the judgment or decree, an appeal would lie from the amended judgment or decree but if the correction of an error or mistake has been made under section 152 of the Code, then no fresh judgment or decree comes into existence and the appeal would be perfectly competent from the decree as originally passed. With respect I am inclined to follow the Madras view because in my opinion correction of a mistake or an error under the provisions of section 152 does not supersede the originad judgment or decree. All that the Court does is to rectify a clerical error arising from an accidental slip or omission and it is the duty of the Court to correct it whenever it comes to its notice or is brought to its notice by any of the parties. In case the intention of the Court is quite clear and if by some clerical error or omission that intention is left

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in doubt or is not properly effectuated, then use can be made of the powers under section 152 and indeed the Court is bound to correct such errors or mistakes which fall within the ambit of section 152. The considerations which prevail in entertaining a review petition and directing any amendment in a judgment or decree under the provsions contained in Order 47 are quite different. Where a judgment or decree is amended as a result of proceedings taken under Order 47, a new judgment or decree comes into existence and supersedes the original one but that cannot be said about any correction or amendment directed or made under section 152 of the Code.

It has now to be decided whether in the present case the judgment and consequently the decree were amended as a result of review proceedings or it should be deemed that the correction which was ordered was done in exercise of the powers conferred under section 152. As has been stated before, the petition was one for review under Order 47. It is not clear whether any note was made in the register under Order 47, Rule 8, that a review was being granted but the tenor of the order of Shri D. C. Aggarwal, who was the successor of Shri S. C. Jain, is such that it could have been made only under the provisions of Order 47. He took into consideration the statement of Suba Singh vendee that a sum of Rs. 4,800 which had been left in trust for payment to the mortgagees had not yet been paid. He, also mentioned in the order that it was reviewable by him even though he was a successor of Shri S. C. Jain since a notice under Order 47, Rule 4 had been issued by Shri Jain himself to the opposite party.

There can thus be no manner of doubt that Shri D. C. Aggarwal had looked at the evidence on record of Suba Singh and come to the conclusion that the amount of Rs. 4,800 had not been paid from which it followed that the plaintiff should have been ordered to deposit only a sum of Rs. 1,651.87 and not Rs. 6,451.87. In the order of Shri Jain there was a mention of the amount of Rs. 4,800 having been kept in trust for payment to the mortgagees and that item was found proved as an item forming part of consideration for the sale but the further fact whether the vendees had paid that amount to the

mortgagees or not was not mentioned in the previous judgment. It cannot, therefore, be said that the order of Shri Aggarwal was only one of correcting a clerical error due to an accidental slip or omission under section 152. In this view of the matter the appeal could be filed only from the decree as amended and the appeal against the original decree was rightly held to be incompetent.

As the point was of some difficulty it may still be open to the appellant to file a fresh appeal against the amended decree and pray for extension of time under section 5 of the Limitation Act if so advised.

In the result the appeal fails and is dismissed but in the circumstances of the case the parties are left to bear their own costs throughout.

*B. R. T.*

## LETTERS PATENT APPEAL

*Before D. Falshaw, C.J., and Mehar Singh, J.*

THE MUNICIPAL COMMITTEE, MALERKOTLA,— *Appellant.*

*versus*

HAJI ISMAIL AND ANOTHER,—*Respondents*

Letters Patent Appeal No. 299 of 1961.

1965

August, 24th.

*Punjab Municipal Act (III of 1911)—Ss. 188(e) and 197—Municipal bye-laws limiting the sale of fruits and vegetables to only four shops in the Sabzi Mandi—Whether valid—Such bye-laws—Whether create a monopoly.*

*Held*, that the power given under clause (a) of section 197 of the Punjab Municipal Act, 1911, is confined to licensing premises for the purposes stated in that clause and prohibiting the same in premises not licensed. This power does not mean fixation of a defined and particular place or places for that purpose. Any places considered proper and suitable by a municipal committee may be licensed for the purpose stated in clause (a) and it may then proceed to prohibit that no premises not having a licence for that purpose will be used for the same. The power in clause (a) of section 197 does not extend to fixing and limiting the sale of fruits and vegetables by the impugned bye-laws to four shops in the Sabzi Mandi at Malerkotla. Those bye-laws do not thus conform to the power under clause (a) of section 197 of the Act and are to this extent *ultra vires* of that provision.