

## Muhammad Yusuf Khan Vs Mahadeo Prasad

**Court:** Allahabad High Court

**Date of Decision:** July 10, 1925

**Acts Referred:** Transfer of Property Act, 1882 " Section 88

**Citation:** AIR 1926 All 134

**Hon'ble Judges:** Sulaiman, J

**Bench:** Division Bench

**Final Decision:** Dismissed

### Judgement

Sulaiman, J.

This is a judgment-debtor's appeal arising out of an execution matter. A preliminary decree for sale was passed on 30th May

1916 and an appeal was preferred from that decree to the Court of the District Judge who modified the decree finally on 27th November 1919.

Between the passing of the decree by the District Judge and the order of the High Court a final decree was passed by the Court of first instance on

22nd January 1918. The decree-holder applied for execution of the final decree as originally prepared. This application was, of course, rejected as

the decree was based on the preliminary decree which had been modified on appeal by the High Court. Ultimately the decree-holder on 20th

February 1922 applied to the Court of first instance for preparation of a new final decree or the amendment of the old one in accordance with the

preliminary decree passed by the High Court in second appeal. The learned Judge instead of ordering that a new decree should be prepared on a

separate sheet of paper amended the old decree and treated it as a decree in favour of the decree-holder. It is noteworthy that the application for

the preparation of the final or an amended decree was made within three years of the order passed by the High Court in second appeal. That

application was accordingly within time. The present application is for execution of the decree prepared on 20th February 1922 and was filed on

11th March 1922. The judgment-debtor took the objection that the decree was not executable inasmuch as the Court had no jurisdiction to amend

the final decree which was based on a preliminary decree which had been modified on appeal by the High Court. The Court of first instance

allowed this objection but on appeal this objection has been overruled.

2. The learned vakil for the objector relies on the Full Bench case of Muhammad Sulaiman Khan v. Fatima (1889) 11 All 314 and the Privy

Council case of Brij Narain v. Tejbal Bikram Bahadur (1910) 32 All 295. Both these cases are clearly distinguishable. In the Full Bench case there

was a decree passed by the First Court which was affirmed on appeal. As soon as the decree was affirmed on appeal the Court of first instance

ceased to have any jurisdiction to deal with the matter. It, however, amended its decree purporting to bring it in accordance with the judgment of

the High Court. The Full Bench pointed out that the Court had no jurisdiction to do anything of the kind because it was the appellate Court alone

which had to prepare its own decree and it was that decree which would have to be executed. Similarly in the case before their Lordships of the

Privy Council the First Court has passed a decree u/s 88, T.P. Act, which was appealed against to the High Court and the appeal was partially

allowed. The Court at first instance also passed a decree u/s 89 of the Act but as far as I can judge from the judgment this latter decree was not

appealed from. Subsequently the Court of first instance amended not only the decree u/s 89 but also the decree under Section 88 by striking out

therefrom the provision for future interest. Obviously when the decree u/s 88 had been appealed from to the High Court, the Court of first instance

had no power to amend it. It, therefore, acted without jurisdiction in doing so. In the present case it has to be noted that the Court of first instance

did not purport to amend the preliminary decree which it had passed previously but accepted the preliminary decree as ultimately passed by the

High Court. The prayer of the decree-holder was either to prepare a new final decree in terms of the preliminary decree passed by the High Court

or to amend the previous final decree so as to bring it in accordance with the preliminary decree. The final decree could not possibly have been

prepared by the High Court. It was the first Court only which could prepare it and it had full jurisdiction to prepare it. The present case, therefore,

is clearly distinguishable.

3. In my opinion the two prayers asked for by the decree-holder in his application dated 20th February 1922 were substantially the same. His

prayer was that a final decree should be brought into existence which should be in accordance with the High Court's preliminary decree, whether

this was a decree prepared on a new sheet of paper and called a new final decree or an amended decree on the old sheet of paper. In my opinion

the Court of first instance had jurisdiction to do both. It could prepare a new final decree in terms of the preliminary decree passed by the High

Court or it could amend its own final decree, (which had never been appealed from) and bring it in accordance with the High Court's preliminary

decree. The application was within time and there was no obstacle in the way to the relief being granted.

4. The decree which was thus prepared can be treated valid in either way and is executable. The appeal has no merits and is dismissed with costs

including fees on the higher scale.