

(1909) 08 CAL CK 0046

Calcutta High Court

Case No: None

Kumar Rameswar Malia and
Others

APPELLANT

Vs

Bhaba Sundari Debi

RESPONDENT

Date of Decision: Aug. 5, 1909

Judgement

1. We are invited in this rule to set aside an order made by the Court below u/s 206 of the Code of 1882. The learned Subordinate Judge has by this order amended a decree originally made in his Court and subsequently modified on appeal by consent of parties in this Court. It is argued on behalf of the petitioners that the Subordinate Court had no jurisdiction to make any order for amendment so as to affect what is now the decree of this Court. This contention is obviously well-founded and is supported by a long series of decisions which are mentioned in the judgment of this Court in Srigobind Singh v. Gangatri Pershad Singh 6 C.L.J. 542. The same view has been affirmed even in cases in which an appeal has been dismissed u/s 551, Code of Civil Procedure: Peary Mohan Mukherjee v. Mohendra Nath Manna 4 C.L.J. 566, Munisami Naidu v. Munisami Reddi 22 M. 293 and Asma Bibi v. Ahmed Husain 30 A. 290 : 5 A.L.J. 584 : A.W.N. (1908) 109. This is not contested on behalf of the opposite party, but it is suggested that it is not competent to this Court to interfere in the exercise of its revisional jurisdiction, inasmuch as an appeal lies against an order of amendment. In support of this view reliance has been placed upon the cases of Visvanathanchetti v. Ramanathan Chetti 24 M. 646 and Brojo Lal Rai Chowdhury v. Tara Prasanna Bhattacharji 3 C.L.J. 188. These cases, however, do not in any way bear out the contention of the opposite party. They merely lay down that an appeal lies from the amended decree, as appears to have been ruled in Menat Ali v. Amader Ali 9 C.W.N. 605. They are not authorities for the proposition that an appeal lies against an order for amendment. It is, therefore, competent to this Court to interfere by way of revision.

2. The result is that this Rule must be made absolute and the order of the Court below discharged. The petitioners are entitled to their costs which we assess at

three gold mohurs.