

Balwantsing Ramchandra Vs Sakharam Mancharam

Court: Bombay High Court

Date of Decision: Sept. 10, 1915

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 97

Citation: 33 Ind. Cas. 137

Hon'ble Judges: Basil Scott, C.J; Shah, J

Bench: Division Bench

Judgement

1. This is an appeal against preliminary decree in a mortgage suit which was passed on the 1st of December 1913. All the accounts directed by

that decree were taken and a final decree was passed on the 9th February 1914. The appellant then, instead of appealing against the final decree,

appealed on the 19th of February 1914 against the preliminary decree. Prima facie such a course appears quite unreasonable, but it is contended

that it is justified by the provisions of the Civil Procedure Code, Section 97, which says that:

Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be

precluded from disputing its correctness in any appeal which may be preferred from the final decree.

2. That section does not, however, in terms prevent a party from filing a combined appeal against a preliminary and final decree, if the dates permit

him to do so. It appears to us that in this case the appellant or those who are acting on behalf of the appellant, who we are told is a minor, by filing

this appeal have sought to take advantage of Section 97 of the Code in order to evade paying proper Court-fees on appeal from a final decree.

We will permit the appellant to have a reasonable time to combine such objections, if any, as he may have against the final decree in this appeal. Of

course the Court-fees, such as may be necessary, will have to be paid. We adjourn the case for two months.