

**(1915) 09 BOM CK 0019**

**Bombay High Court**

**Case No:** None

Balwantsing Ramchandra

APPELLANT

Vs

Sakharam Mancharam

RESPONDENT

---

**Date of Decision:** Sept. 10, 1915

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - 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.