Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice, and Mr. Justice Middleton

Sept. 9, 1910

SINNO APPU *v.* ANDRIS *et al.*

D. C. (Testamentary), Galle, 8,510.

Clerical error in judgment repeated in decree—Court has power to amend decree—Judgment of lower Court affirmed on appeal—Supreme Court alone can alter clerical errors in its decree—Civil Procedure Code, s. 189.

If a Court is satisfied that there is a clerical error in its decree it is bound to correct it, and the fact that there is the same clerical error in the judgment upon which the decree is founded cannot make any difference, even though the result is that the decree as amended is at variance with the judgment. If the judgment contains a mistake in addition, which mistake is repeated in the decree, or if it contains a clerical error which is repeated in the decree, the decree ought to be amended.

Where, however, a decree of a lower Court is affirmed on appeal, the decree becomes a decree of the Supreme Court, and the lower Court has no jurisdiction to amend it.

THE facts of this case are fully set out in the judgment of the Chief Justice as follows:—

This is an appeal by the plaintiff from an order amending the decree. The plaintiff, in his plaint, asked for a declaration of his title to half of seven thirty-second-parts of the soil of certain land and to some trees and shares in trees, and for recovery of possession and for damages. He alleged that the defendants had forcibly and

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unlawfully taken possession of the land; and he estimated his damages at Rs. 75 a year, and the rights which he claimed at Rs. 400. The first defendant denied the plaintiff's title, and set up a claim by prescriptive possession. The second defendant disclaimed title and denied the ouster, and said that he was in possession of some of the trees under a lease from the first defendant. On February 2, 1909, issues were settled, and the Judge noted " damages agreed upon at Rs. 10 a month." The case was tried the same day, and on the 4th judgment was given in favour of the plaintiff for one-third of half of thirteen thirty-seconds of the soil and paraveni trees and thirty-five trees of the planter's share, and damages at Rs. 10 a month for two years; and the decree followed the judgment. The defendants appealed. The first objection put forward in their petition of appeal dated February 13, 1909, was that, as the Judge had held that the alleged ouster was fictitious, no damages and costs should have been awarded; they then set out some reasons for holding that the Judge's finding on the facts was wrong; and the second defendant urged that he was in no way liable for damages or costs. That appeal was dismissed on November 30, 1909. The defendants then applied to this Court for *restitutio in integrum*, supporting their application by reference to some documents which had not been put in evidence at the trial, but the application was refused on March 22, 1910. Then, on May 26, 1910, the first defendant's proctor applied to the District Court to amend the decree of February 4, 1909, by substituting Rs. 10 a year for Rs. 10 a month. He alleged that the word " month " in the Judge's note of the agreement as to damages on February 2, 1909, was a mistake for " year." The application was heard on June 2; no evidence was given; the plaintiff's proctor, who was not the proctor who had appeared for him at the trial, said that his client was absent, and that he could not admit that it was a pure mistake, and he contended that the Court had no power to alter the decree. The learned Judge, the same Judge who had tried the case, thought that there was no doubt that it was not the intention of the parties to agree to Rs. 10 a month; that as the damages claimed were only at the rate of Rs. 75 a year, it was impossible that counsel could have agreed upon damages at Rs. 120 a year. He said that it was impossible to say how the error arose, but that it was probably a clerical error of his own. He held that he had power to correct the error, and he accordingly made the order now under appeal, amending the decree by giving damages at the rate of Rs. 10 a year, instead of Rs. 10 a month.

The plaintiff appealed.

A. St. V. Jayewardene, for the appellant.—The error, if it be an error, is in the judgment; it is not merely a clerical or arithmetical error in the decree. The decree in this case is in strict conformity

with the judgment. Section 189, Civil Procedure Code, does not give the Court jurisdiction to correct errors in the judgment. The corresponding sections of the Indian Code give the Court power to correct errors even in judgments. The District Court has no power to amend a decree affirmed by his Court. Counsel cited *Ramasamy Pulle v. De Silva*,[1] *Dabera v. Marikar*,[2] *Tarsi Ram v. Man singh*,[3] *Silva v. Silva*.[4]

Wadsworth, for the defendants, respondents.—Even if the District Court had no power to amend the decree, the Supreme Court may even now amend the decree, as the whole case is before it. But as the judgment of the District Court was affirmed by this Court, it may be said that the decree which is now sought to be executed is the decree of the District Court. A Court may correct errors even in a judgment, if the judgment does not correctly state what the Court actually decided and intended to decide (*Ainsworth v. Wilding* [5]). The Court has an inherent power to correct clerical errors of this nature. The following authorities were also cited: *Thakoor v. Chuttoraj*,[6] *Annual Practice 398*.

A. St. V. Jayewardene, in reply.—*Ainsworth v. Wilding* turns on the wording of Rules 11 and 12, Order 28. The Civil Procedure Code does not contain similar provisions.

[After the argument was closed, Mr. Jayewardene submitted further authority (*Lal Brig Narain v. Bikram Bahadur* [7]).]

Cur. adv. vult.

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His Lordship, after setting out the facts, continued:—

The Civil Procedure Code says nothing about the amendment of a judgment, but section 189 enacts that if any clerical or arithmetical error is found in a decree, the Court shall amend the decree so as to correct the error. It seems to me, therefore, that if a Court is satisfied that there is a clerical error in its decree, it is bound to correct it, and the fact that there is the same clerical error in the judgment upon which the decree is founded cannot make any difference, even though the result is that the decree as amended is at variance with the judgment. If the judgment contains a mistake in addition, which mistake is repeated in the decree, or if it contains a clerical error which is repeated in the decree, the decree ought to be amended. In the present case, however, the decree of the District Court had been affirmed on appeal before this application was made; the decree had become a decree of the Supreme Court; and the District

[1] *(1909) 12 N. L. R. 293.*
[2] *(1892) 1 S. C. R. 210.*
[3] *(1886) 8 All. 492.*
[4] *(1910) 13 N. L. R. 87.*
[5] *(1896) 1 Ch. 673.*
[6] *(1873) 21 W. R. 41.*
[7] *(1910) "Lawyer" for August, 36.*

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Court had no jurisdiction to amend it (see *Lal Brij Narain v. Bikram Bahadur* [1]). But I think that this Court, having the whole case now before it, ought to deal with it as in revision and make the amendment, if it is quite clear that there was an error; that is, if it is quite clear that the parties did not at the settlement of issues intend to agree that the damages should be Rs. 10 a month, but that both parties intended to say Rs. 10 a year. The judgment of the District Court was pronounced in Court. The decree was signed by the plaintiff's proctor. That proctor died at the end of 1909, so that there is no evidence as to what he thought about the agreement as to damages, except so far as the fact of his having signed the decree is some evidence that he thought that it carried out the agreement. The decree is very short, and it does not seem likely that the clients or their proctors should read it through without noticing the mistake, if it was a mistake. Yet both the proctors must have read both the decree and the judgment many times in the course of the two proceedings in the Supreme Court; and on the appeal the defendants, although they objected to the order to pay damages, never hinted that there was a mistake in the amount. And on the present application no evidence at all was offered. But surely the defendants and their proctor, or one of them, can remember what the real agreement was. The applicant ought to have given some evidence that his proctor said Rs. 10 a year, and that the plaintiff's proctor agreed to Rs. 10 a year. I am not satisfied that both parties agreed to Rs. 10 a year, but I think that it would be right to give the defendants an opportunity of giving some evidence now. The appeal may stand over for five weeks, with leave for the respondents to file an affidavit or affidavits, copies of which they must deliver to the appellant's proctor within fourteen days, and the appellant will have fourteen days after such delivery to file an affidavit or affidavits in reply, and to deliver copies to the respondents' proctor.

MIDDLETON J.—

I agree to the matter standing over for affidavits.

After reading the respondents' affidavit the Supreme Court amended the decree by substituting Rs. 10 a year for Rs. 10 a month.

[1] *(1910)* " *Lawyer* " *for August, 36.*