

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
Lala Brij Narain v. Kunwar Tejbal  
Bikram Bahadur, from the High Court of  
Judicature for the North-Western Provinces,  
Allahabad; delivered the 19th April, 1910.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD COLLINS.

SIR ARTHUR WILSON.

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[*Delivered by Lord Collins.*]

The story out of which the points involved in this Appeal arise is rather intricate. On the 5th March, 1898, the Appellant and two persons named Kishori Lal and Sri Ram instituted a suit against the predecessor in title of the Respondent before the Subordinate Judge of Moradabad, for the recovery of more than a lakh of rupees with future interest, by sale of property mortgaged under two documents dated respectively the 11th May and the 13th December, 1894. On the 6th May, 1898, the claim was decreed by the First Court, but on Appeal to the High Court at Allahabad that Court took the view that the learned judge had placed undue pressure upon the Defendant, who had asked for a postponement, on the ground of illness, to go on

with the case, and accordingly set aside the decree which he had made and remanded the case for determination according to law.

On the 30th January, 1901, the case came again before the Subordinate Judge of Moradabad and resulted in a decree for Rs. 70,257 : 14 : 0, with future interest. Meanwhile Kishori Lal and Sri Ram had sold the whole of their interest in the decree to one Lachman Das, to whom the present Appellant also transferred a part of his interest as a decree holder, and the name of Lachman Das was added to the record. From this decree both parties appealed to the High Court. The High Court dismissed the Defendant's Appeal, and with a slight modification affirmed the decree of the First Court on the cross Appeal.

On the 5th October, 1901, on the application of the original decree holders, the First Court made an Order Absolute for sale of the mortgaged property under secs. 89 and 93 of the Transfer of Property Act for the amount decreed, together with future interest. Thereafter the present Appellant applied to the First Court for execution of the said decree, and after certain intermediate proceedings, which it is not necessary to refer to in detail, the judgment debtor on the 21st November, 1903, deposited the entire amount due under the decree, with future interest.

On the 9th February, 1904, the present Respondent, the judgment debtor, applied to the First Court to amend the said decree by striking out so much of it as awarded future interest on the amount decreed. In March, 1904, Petitions objecting to the application of the judgment debtor on various grounds were filed on behalf of the present Appellant and Lachman Das. With reference to the allegations of the parties, the

Subordinate Judge framed the following issues for trial:—

1. Whether the judgment debtor's application for amendment of decrees is barred by Limitation ?
2. Whether the said application is barred by sec. 13 of the Civil Procedure Code ?
3. Whether the decrees of this Court under secs. 88 and 89 of Act IV. of 1882 can be amended by this Court as requested by the judgment debtor ?
4. Whether the judgment debtor has a right to apply for amendment of the said decrees ?

On the 11th June, 1904, the Subordinate Judge made an order granting the application of the judgment debtor. He found the four issues in his favour, and amended the two decrees of the Court made under secs. 88 and 89 of the Transfer of Property Act by striking out of them the provision for future interest, the effect of such amendment or modification being to reduce the amount payable under the decrees by a sum of over Rs. 19,000.

Two applications were therefore presented to the High Court by the present Appellant and the said Lachman Das for revision of the order of the Subordinate Judge dated the 11th June, 1904. They were heard by a Divisional Court, constituted by two learned judges of the High Court, who on the 23rd February, 1905, delivered separate judgments disposing of the two applications for revision in the following manner:

With regard to the application 24 of 1904, they observed that the order revision of which was asked for was an order passed by the Subordinate Judge of Moradabad amending a decree of his Court. Previous to the order of amendment the decree had been affirmed on Appeal by the High Court. The Subordinate Judge therefore had no jurisdiction to amend. The learned judges therefore allowed the application and set aside the order amending the decree, but only

so far as it affected the interests of the Applicant Lachman Das. With regard to the application for revision 32 of 1904 of Brij Narain the learned judges delivered the following judgment :

“Looking to all the circumstances of the case, we do not think that this is a case in which we ought to exercise our discretionary power in revision. We reject the application, but make no order as to costs.”

Dissatisfied with the Judgment and Decree of the High Court made on the said application 32 of 1904, the present Appellant applied for leave to appeal therefrom to His Majesty in Council. His application was heard by The Hon. The Chief Justice and the Hon. Sir W. R. Burkitt.

When granting the application their Lordships, after referring to the facts of the case, made the following observations :—

“A Bench of this Court on the application by Lachman Das allowed the first Application, holding that the Subordinate Judge had no power to modify his decree after it had been confirmed by the High Court, and set aside the order complained of. In the other application No. 32 of Brij Narain, the Bench made an order rejecting it, holding that, under all the circumstances of the case, this was not a case in which they should exercise their discretionary power in revision. The consequence is that there are now two joint decree holders, as to one of whom the decree contains a provision for future interest the value of which is Rs. 19,000 odd, whilst as to the other this provision does not exist. The provision of the decree therefore seems to be apparently inconsistent, as out of two joint decree holders one can execute the decree *plus* future interest, whilst the other cannot. Under these circumstances we think this is a case which we should certify to be fit for Appeal.”

Their Lordships have not had the advantage of hearing the case argued for the Respondent, but they think the High Court have themselves said enough to make it clear that if the decree of the First Court was made without jurisdiction as altering a decree after it had been affirmed on appeal in the case of Lachman Das, so also th

alteration in Brij Narain's Case was equally ineffectual, and ought not to have been allowed to stand.

Their Lordships will humbly advise His Majesty that this Appeal should be allowed. The Respondent will pay the costs.

In the Privy Council.

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LALA BRIJ NARAIN

*v.*

KUNWAR TEJBAL BIKRAM  
BAHADUR.

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