

*Civil Petition.*1865.  
March 16.

BHANUSHANKAR GOPA' LRA'M ..... *Applicant.*  
 RAGHUNA'THRA'M MANGALRA'M ..... *Respondent.*

*Decree—Alteration of by subordinate court, after confirmation by High Court—Review.*

*Held that, after a decree of a District Judge is confirmed by the High Court in appeal, no subordinate court has the power of making any alteration whatever in it.*

*The proper course is to apply to the High Court itself to review its decree.*

THIS was an application to set aside an order made by C. H. Cameron, District Judge of Súrát.

Raghunáthráṁ Mangalráṁ, the respondent, instituted a suit against the petitioner, Bhánushankar, in the Court of the Principal Šadr Amín of Súrát, to establish his right to the use of a well and a tank, and to obtain an order for the removal of a fence; and on the 6th of June 1862 he got a decree awarding to him the use of the well and tank, and ordering the removal of the fence.

On the 10th of September 1862 the District Judge of Súrát, in appeal, modified this decree by disallowing so much of the claim as had reference to the removal of the fence.

A special appeal having been preferred, the High Court, on the 15th of September 1863, confirmed with costs the decision of the District Judge.

On the 14th of December following, the plaintiff made an application to the Principal Šadr Amín for enforcing the decree, as modified by the District Judge and confirmed by the High Court.

While that application was pending in the Principal Šadr Amín's Court, the plaintiff, on the 12th of July 1864, made another application to the then District Judge, C. H. Cameron, praying for an amendment of the decree of his predecessor, A. B. Warden, by striking out that portion of it which disallowed his claim for the removal of the said fence. This application was granted by the District Judge, on the

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6th of October following, and he drew a red line through that portion of his predecessor's decree which disallowed the plaintiff's claim for the removal of the fence.

On the 13th of October 1864 the plaintiff withdrew his first application for execution from the Principal Sadr Amin's Court, and presented another, on the 17th idem, for enforcing the decree as it stood subsequently to the abovementioned alteration by the District Judge. The Principal Sadr Amin ordered enforcement of the decree in its altered form, and, in execution of it, a portion of the fence was removed. This order was confirmed by the District Judge.

The case was heard before COUCH and WARDEN, JJ.

*Nánabhái Haridás*, for the applicant:—The alteration by the District Judge of his predecessor's decree, after it was confirmed by the High Court, is unauthorised and illegal. It prejudicially affects the legal rights of the applicant, Bhanushankar, as finally determined by the High Court in special appeal, and places the decree-holder in a better position than he stood before. The act of the District Judge should, therefore, be set aside.

*Shántarám Náráyan*, *contra*:—The District Judge has merely corrected an evident error in the Gujaráti translation of his predecessor's minute. The decree as it now stands accords more with the English minute than it did before the alteration, and Mr. Cameron seems to have correctly guessed his predecessor's meaning. Besides, the alteration was very immaterial, and no appeal to the High Court is allowed by the law in a case like this. The Court should decline to interfere.

COUCH, J. :—We consider in this case that the act of the District Judge must be set aside. We cannot agree with Mr. Shántarám that the alteration is an immaterial one. It is a very material alteration. It gives to the decree a different operation from what it would have had without it.

A Judge, in our opinion, in executing a decree, has no right to speculate as to the probable intentions of his predecessor in passing it. If the words used in the decree be

clear, as in this case they are, the Judge is bound to give effect to them; and after a decree is confirmed by this court, no subordinate court has the power of making any alterations whatever in it. The act of the District Judge in altering the decree is, therefore, set aside.

A review of the decree of this Court may, however, be applied for in the present case; and the lapse of time is not to prejudice the application.

*Application granted.*

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March 23.

AMBA'RA'M HARIVALLABHDA'S ..... Applicant.  
HIMATSING KALIA'NJI ..... Opponent.

*Execution of Decree—Application for—Representatives of Judgment Creditor—Powers of Attorney—Act VIII. of 1859, Secs. 17 and 315—Reg. II. of 1827, Sec. v., Cl. 2.*

*Held* that where one of several representatives of a deceased judgment creditor applies for the execution of a decree, the general powers of attorney contemplated by Sec. 17, Cl. 1, of Act VIII. of 1859 are not necessary; but it is sufficient, if the applicant is authorised, under Sec. 115, to act for the other representatives.

*Held* also that in executing a decree of a court of competent jurisdiction, the court executing it cannot question the validity of any portion of it. Its duties are only of a ministerial character.

THIS was an application to set aside an order passed by E. P. Down, District Judge of Ahmedábád, confirming, in appeal, an order made by the Munsif of Viramgám, refusing to enforce a decree.

In 1837 a decree was passed, by mutual consent of the parties, by the Munsif of Viramgám, in favour of Rájíbhái Harivallabhdás and against Gulábdás Sablábhái, for the sum of Rs. 2,145-8-9, with interest, from the date of the decree until full payment, at the rate of twelve per cent. per annum.

The decree was partially executed in 1856.

On the 3rd of May 1862, the original judgment creditor, Rájíbhái, having died, his brother Ambárám, for himself and as mukhtyár for his nephews, Baldev Bálmukan, Vrijbhúkan Lálbhái, Gulábchand Lálbhái, and Ranchhod Lálbhái, they all jointly representing Rájíbhái, applied to the Munsif

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