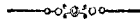


find in Sec. 21 of Act XIV. of 1859, namely, "nothing in the preceding section shall apply to any judgment, decree, or order in force at the time of the passing of this Act;" and, therefore, I must adhere to our former decision that Sec. 20 does not apply to old decrees. I, accordingly, reject the appeal.

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MAKUNDA'  
BA'LA'CHA'RYA  
v.  
SITA'RAM  
et al.

NEWTON, J.:—I fully concur.

*Appeal rejected.*



*Special Appeal No. 418 of 1867.*

July 21.

MAKHAN NAI'KIN, daughter of ALLA-  
RAKHI.....*Appellant.*  
MA'NCHAND LADHA'BHA'I, deceased, his  
heir his brother NAHA'LCHAND, *et al.*...*Respondents.*

*Appeal—Time for Appealing—Raking up old Claims.*

An appeal will not be allowed, after the time for appealing has expired, merely because a judgment altering the view of the law which prevailed at the time of the decision of the original suit has subsequently been given by the High Court.

THIS was a Special Appeal from the decision of F. Lloyd, Judge of the District of Puna, in Appeal No. 359 of 1865, confirming the decree of the Munsif of Puna.

The original suit was instituted by Manchand, on the 24th of August 1860, to recover possession of a house mortgaged to him, on the ground that he had, according to the terms of the mortgage bond, become a proprietor of the house, as the money was not repaid within the stipulated time.

The Munsif awarded the claim on the 19th of January 1861. Against this decision the defendant, Makhan, preferred an appeal *in forma pauperis*, but the Judge, on the 10th of April 1861, refused to admit it on the file. Subsequently, on the 10th of August 1865, the defendant filed a duly stamped regular appeal. The Judge, F. Lloyd, however, confirmed the Munsif's decree, for the following reasons:—

“The present appeal was not filed till the 10th of August 1865. In the mean time, namely, on the 25th of September

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 LADHA'BHAI  
 et al.

1861, the house in dispute had been made over to the plaintiffs. The decision of the Munsif was in conformity with the view then generally held of the law, namely, that a bond like the one on which this claim is founded, confers on the mortgagee an absolute right to property in the event of the mortgage-money not being paid off within the time limited in the mortgage instrument; but it is now sought to get the Munsif's decree amended, on the strength of the High Court's decision in S. A. No. 299 dated the 31st of August 1864.

"I am of opinion, however, that to apply this ruling to the present case would be very unjust; and as in the decision quoted the High Court further laid down that in cases of this kind 'the determination must be left in a great measure to depend on an equitable consideration of all the circumstances attending it,' I decline to interfere."

The case was heard this day, before COUCH, C.J., and NEWTON, J.

*Dhirajlal Matheuradas* for the appellant.

*Pándurang Balibhadra* for the respondent.

COUCH, C. J. :—The application to appeal *in formâ pauperis* was rejected in 1861, which was three years before the decision in *Rámji v. Chinto (a)*. The appellant, with a view to take advantage of the decision in that case, filed an appeal on the 10th of August 1865, which was a year after the decision. But we cannot allow advantage to be taken in this way of a new ruling. We must, therefore, confirm the lower court's decree with costs.

NEWTON, J., concurred.

(a) 1 Bom. II. C. Rep. 199.