

[APPELLATE CIVIL JURISDICTION.]

1873.
August 20.

Special Appeal No. 490 of 1872.

SAINAL RANCHHOD..... *Plaintiff and Appellant.*
DULLABH DVA'RKA' *Defendant and Respondent.*

Code of Civil Procedure—Review.

When a review of a decision has been admitted, the whole case is thereby re-opened.

THIS was a special appeal against the decision of E. Hosking, Acting Extra Assistant Judge at Ahmadabad, reversing, in review, the decree of his predecessor, and confirming that of the Court of first instance.

The plaintiff brought this suit, in the Court of the Subordinate Judge of Dhanduka, to restrain the defendant from obstructing the plaintiff in making a drain in a portion of the plaintiff's house. The defendant contested the plaintiff's right to construct the drain. The Subordinate Judge rejected the plaintiff's claim. In appeal, Mr. Scott, the Assistant Judge of Ahmadabad, holding that the plaintiff has established his right to construct his drain, in the way in which he was constructing it, gave a decision in his favor. This decision was admitted to review by his successor Mr. Hosking, who, going through the case *de novo*, came to the same conclusion as the Subordinate Judge, and he, therefore, confirmed his decree, reversing that of Mr. Scott.

The special appeal was heard by MELVILL and NA'NA'BHA'I HARIDA'S, JJ.

Macpherson, (with him *Dhirajlál Mathurádás* and *Girdharlál Dayáldás*,) for the special appellant, contended that Mr. Hosking should have limited his consideration to the grounds on which he admitted the review; and that, as it appeared, after full inquiry, that the new circumstances thus imported into the case did not really affect the merits, it was not competent to Mr. Hosking to disturb the judgment of his predecessor.

Branson (with him *Nagindás Tulsidás*) for the special respondent.

PER CURIAM:—We adhere to the decision in Special Appeal 200 of 1868, which is in accordance with what has been the invariable rule in this Court, viz., that when a review has been admitted, the whole case is re-opened. The case in Special Appeal 368 of 1872 was a peculiar one, in which the application was by the successful party for correction of a mere clerical error in the decree, and the judgment of this Court appears to have been carefully limited to the circumstances of that case only.

Decree confirmed with costs.

[APPELLATE CIVIL JURISDICTION.]

Miscellaneous Special Appeal No. 38 of 1871.

SAKHA'RA'M RA'MCHANDRA

DIKSHIT..... *Defendant and Appellant.*

GOVIND VA'MAN DIKSHIT,

purchaser of a decree

obtained by Mádhavráv

Ganesh Deshpándé *Plaintiff and Respondent.*

Agreement—Decree—Hindu Law—Liability of sons and grandsons.

An agreement entered into before decree, between a person who subsequently became the decree-holder and the defendant, his debtor stipulating that the decree should be enforced in a particular manner, is no bar to the execution of that decree according to its terms.

The property of a Hindu which has descended upon his sons and grandsons is, while in their hands, liable to his debts.

Bombay Act VII. of 1866 does not apply to cases in which judgment had been pronounced before its enactment.

THIS was a miscellaneous special appeal from the order of R. H. Pinhey, Judge of the District of Puna, amending the order of the Subordinate Judge of that place.

The facts of the case will fully appear from the following extract from the District Judge's judgment:—

1873.

SAINAL
RANCHHOD
v.
DULLABH
DVA'RKA'.

June 26.