1886.

VISHNU SAKHÁRÁM PHÁTAK v. KÁSHINÁTH BÁPU SHANKAR.

of many years, unless there has been some fraud or misrepresentation and an absence of negligence. The parties to the transfer in 1859 stood on a precisely equal footing, and no just claim remained afterwards to Bábáji and Rámchandra to call on Vishnu, much less on the present defendants, for a surrender in their favour as mortgagors.

We, therefore, confirm the decree of the District Court with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

1886. *September* 21.

SOUDE SHRINIVASAPA, (ORIGINAL PLAINTIFF), APPELLANT, *v.* KRISHNAPA HEGDE, (ORIGINAL DEFENDANT), RESPONDENT.*

Practice—Statement of claim in the decree of Appeal Court not a part of the decree—Civil Procedure Code (Act XIV of 1882), Secs. 579 and 587.

On a second appeal the High Court awarded the plaintiff's claim with costs throughout; but the claim, as stated in the paper book of appeal, differed from the claim as it had been stated in the plaint.

Held, that the award of the claim was to be understood as referring to the claim as stated in the plaint, and not as described in the paper book. Sections 579 and 587 of the Civil Procedure Code (Act XIV of 1882) do not require the claim to be stated in the decree, so as to make such statement a part of the decree itself.

THIS was a second appeal from the decision of G. Druitt, Acting District Judge of Kánara.

In a suit brought by the plaintiff against the defendant, both the lower Courts having given a decree against the plaintiff, he preferred a second appeal to the High Court, which reversed those decrees, and awarded the plaintiff's claim with costs throughout. According to the usage of the office, the claim was set forth in the paper book of appeal, and the decree was drawn up in accordance with it.

The plaintiff presented a *darkhást* for execution of the decree to the Subordinate Judge of Sirsi, and prayed for interest, as stated in the plaint, up to the date of satisfaction of the decree. The Subordinate Judge, finding no express award of such interest

* Second Appeal, No. 432 of 1884.

1886.

SOUDR SHRINIVASAPA v. KRISHNAPA HEDGE.

in the decree of the High Court, disallowed plaintiff's prayer for interest, with the following remarks :—

"In disposing of this application, I think I am bound by authority. The previous proceedings in this Court in the matter of the *darkhást*, in which this application now comes, show that plaintiff seeks to recover Rs. 650 as future interest in addition to Rs. 1,485, the amount decreed. The decrees of both the lower Courts were reversed by the High Court, which awarded the plaintiff's claim with costs. The decree of the High Court is silent about future interest, although it was entered by the plaintiff in his bill of particulars in the plaint. Section 209 of the Civil Procedure Code does not make it imperative upon the Courts to allow future interest upon the amount decreed in favour of the plaintiff, or interest on costs. It gives the Courts discretionary power to allow such future interest.

"No doubt, future interest formed part of the plaintiff's claim, which has been awarded by the High Court decree. But so long as this decree does not expressly grant future interest, and the rate at which it should be assessed, I am of opinion that I am not at liberty to place a wider construction on that decree as it now stands. * * * * * * "

From this order, the plaintiff appealed to the District Judge, who confirmed the lower Court's order.

The plaintiff preferred a second appeal to the High Court.

Shámráv Vithal for the plaintiff:—The decree of the High Court was wrongly framed. The plaintiff having stated in his plaint what he prayed for, and the High Court having awarded his claim, it must necessarily be the claim as stated in the plaint.

Náráyan Ganesh Chandávárkar for the defendant:—The "claim" must be taken to be the one awarded by the decree of the High Court. A plaintiff cannot recover more than what is given expressly by the decree—*Prabhalanadha Pillay* v. *Ponnusawmy Chetty*(1); *Thamman Singh* v. *Gangá Rám*(2). Both the lower Courts have construed the High Court's decree as it was, and that construction cannot now be questioned in second appeal.

(1) 6 Mad. H. C. Rep. Rul., 1. (2) I. L. R., 2 All., 342.

1886.

SOUDE SHRINIVASAPA v. KRISHNAPA HEDGE.

SARGENT, C. J.:—The High Court, in awarding the plaintiff's claim with costs throughout, must, we think, be understood as referring to the claim as stated in the plaint, and not to the claim as described, according to the usage of the office, by the officials of this Court at the head of the paper book of appeal. Sections 579 and 587 of the Code of Civil Procedure do not require the claim to be stated in the decree so as to make that statement a part of the decree itself. The claim, as made by the plaint, is for interest until satisfaction, in clear and unambiguous language, which distinguishes it from the claim in *Prabhalanadha Pillay* v. *Ponnusawmy Chetty*(1); nor is there any necessity for construing the decree otherwise than according to its language, in its plain grammatical sense, which distinguishes it from the case we have been referred to in *Thamman Singh* v. *Gangá Rám*(2).

We think, therefore, that the plaintiff was entitled, under the decree, to interest up to payment on the principal sum of Rs. 1,300; and as Rs. 1,485 and costs of suit, making in all Rs. 2,084-2-7, were paid into Court on 14th June, 1884, the date of the *darkhást*, we must vary the order of the Court below by directing that on payment by the defendant of further interest on Rs. 1,300 from date of suit up to the day of payment, together with the plaintiff's costs in the *darkhást* proceedings and on this appeal, the defendant shall be deemed to have satisfied the decree.

(1) 6 Mad. H. C. Rep. Rul., p. 1. (2) I. L. R., 2 All., 342.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

1886. *September* 29.

JAMNA'BA'I, (ORIGINAL APPLICANT No. 2), APPELLANT, *v.* HASTUBA'I (ORIGINAL APPLICANT No. 1), RESPONDENT.*

Act XXVII of 1860—*Certificate of heirship under Act XXVII of* 1860, *grant of*—*Joint certificate to widows of two sons of owner of estate.*

R. and his sons, L. and S., were members of an undivided family. S. predeceased R., who subsequently died, leaving L. him surviving, and on the death of L. the widows of L. and S. applied for a joint certificate of heirship to the estate of R. Before their application was heard, L.'s widow repudiated the joint application, and prayed for the grant of a certificate to her alone. The District Judge, how-

* Appeal No. 54 of 1885.