1907.

EMPEROR v. FERNAD.

We must, for these reasons, quash the convictions and sentences and direct the fines, if paid, to be refunded to the petitioners. It follows that the order of compensation passed by the Magistrate falls to the ground, so also all other orders passed by the Magistrate relating to the property seized in connection with the case.

Convictions and sentences set aside.

R. R.

APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Beaman.

1907.

March 21.

BAI SHRI VAKTUBA (ORIGINAL DEFENDANT 1), APPLICANT, *v.* AGARSANGJI RAISANGJI (ORIGINAL PLAINTIFF), OPPONENT.*

Civil Procedure Code (Act XIV of 1882), ss. 206 and 622—Judgment—Decree—Addition to the decree not warranted by the judgment—Jurisdiction—Revision.

Proceedings under s. 206 of the Civil Procedure Code (Act XIV of 1882) terminate in an order, and such an order can be dealt with in revision under s. 622 of the Civil Procedure Code (Act XIV of 1882).

The order under s. 206 of the Civil Procedure Code (Act XIV of 1882) is beyond jurisdiction if it makes an addition to the decree not warranted by the judgment.

APPLICATION under the extraordinary jurisdiction (s. 622 of the Civil Procedure Code, Act XIV of 1882) against the order passed by Chandulal Mathuradas, First Class Subordinate Judge of Ahmedabad, on an application for the amendment of a decree.

The plaintiff brought a suit in the Court of the First Class Subordinate Judge of Ahmedabad against defendant 1, Bai Shri Vaktuba, and her minor son Ranjitsingji, defendant 2, for a declaration that defendant 2 was a spurious and illegitimate child and was not born to the plaintiff. He also prayed for an injunction.

* Application No 303 of 1906 under extraordinary jurisdiction.

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BAI SHRI VAKTUBA v. AGARSANGJI.

Defendant 2 being a minor, the plaintiff was required by the Court to supply the Nazir of the Court, who was appointed guardian *ad litem*, with funds for defending the suit on the minor's behalf.

The Subordinate Judge passed a decree for the plaintiff and directed defendant 1 to pay his costs.

Subsequently the plaintiff presented an application under section 206 of the Civil Procedure Code (Act XIV of 1882) for the amendment of the decree by adding the words "that the sum of Rs. 580 advanced by the plaintiff to defendant 2 to defend his case be paid by defendant 1." The Court granted the application and passed the following order on the 13th August 1906:—

> Ordered that the amount of Rs. 580 already referred to in the decree be included in and added to the amount of plaintiff's costs as set out in the said decree.

Against the said order defendant 1 applied under the extraordinary jurisdiction (s. 622 of the Civil Procedure Code, Act XIV of 1882) urging, *inter alia*, that the Subordinate Judge had no jurisdiction to add to the decree under section 206 of the Code and that the plaintiff's remedy lay in an application for review. A *rule nisi* was issued requiring the plaintiff "to show cause why the order of 13th August 1906 should not be set aside as beyond the jurisdiction conferred by section 206 of the Civil Procedure Code."

T. R. Desai appeared for the applicant (defendant 1) in support of the rule:—The lower Court had no jurisdiction to add to the decree in proceedings held under section 206 of the Civil Procedure Code. It is clear the proceedings were under that section. It permits an alteration when there is an arithmetical or clerical error, or when the decree has to be brought in conformity with the judgment. In other cases a remedy must be sought by applying for review. In the present case, the decree as it originally stood was in accordance with the judgment. But when the execution proceedings commenced the plaintiff found out that the decree gave him no right to proceed against defendant 1 for the recovery of the amount

which he had advanced to the guardian *ad litem* of defendant 2, and then he made an application for the amendment of the decree. The Subordinate Judge granted the application though an appeal was pending in the High Court against the decree.

The order under section 206 being not appealable, our only remedy lay in moving the High Court under its extraordinary jurisdiction. There is no express ruling of this Court, but the Calcutta and Allahabad High Courts have decided that the High Court can interfere in revision: *Nalinakshya Ghosal* v. *Mafakshar Hossain* (1), *Hasan Shah* v. *Sheo Prasad* (2).

On the merits the plaintiff's application was not sustainable. The sum advanced by the plaintiff to the gurdian *ad litem* of the minor defendant for defending the suit cannot be said to be plaintiff's costs of the suit. By granting the plaintiff's application the Court has passed a further order which the judgment did not contain.

M. N. Mehta appeared for the opponent (plaintiff) to show cause:—This is not a fit case for interference in revision. The decree as amended was appealable under section 540 of the Civil Procedure Code: *Narayanasami* v. *Natesa* (3).

JENKINS, C. J.—It is clear that in this case the Court acted under section 206 of the Civil Procedure Code and only under that section.

The decisions in Calcutta and Allahabad establish that the proceedings under section 206 terminate in an order.

We are therefore able to deal with the matter, and we have no doubt that the learned Judges who granted the rule were right in their view that this order was beyond the jurisdiction conferred by section 206.

We therefore make the rule absolute with costs throughout.

Rule made absolute.

G. B. R.

(1) (1900) 28 Cal. 177. (2) (1893) 15 All. 121.

(3) (1892) 16 Mad. 424.