

**Kabula and ors. Vs. Syed Mohammad Hashim Ali Khan**

**LegalCrystal Citation :** [legalcrystal.com/476716](http://legalcrystal.com/476716)

**Court :** Allahabad

**Decided On :** May-27-1909

**Reported in :** 2Ind.Cas.551

**Judge :** Richards and ;Alston, JJ.

**Appellant :** Kabula and ors.

**Respondent :** Syed Mohammad Hashim Ali Khan

**Judgement :**

1. This is an application in revision. The facts are shortly as follows: The plaintiff brought a suit to enforce a mortgage. He impleaded the mortgagor and the subsequent mortgagee. In his plaint he set forth property which he sought to sell in order to realise his mortgage debt. The property as set forth was merely a kotha and a sugar-cane press. An ex parte decree in terms of the plaint was passed. The mortgage really comprised some zemindari property. This was not specified in the plaint nor in the decree. The decree was obtained in 1905 and was duly made absolute in 1906. In the order making the decree absolute the zemindari property was again omitted. The kotha and sugar-cane press were sold and then in the year 1908 the plaintiff applied to the Munsif to amend the decree by including the zemindari property. It is perfectly clear that the jurisdiction of the Court was only to amend the decree so as to bring it into conformity with the judgment. The decree was already in conformity with the judgment and what the Munsif did was to amend the decree so as to make it conform not with the judgment but with the mortgage. He had clearly no jurisdiction to do this. We think it would be very dangerous if decrees after they had been duly executed as they stood and after a lapse of two years should be allowed to be altered in the manner in which the present decree was altered by the learned Munsif. We allow this application and set aside the order of the learned Munsif passed under Section 206 of the Code of Civil Procedure of 1882. The so called amendments of the decree will also be set aside. The applicants will have their costs.