CIVIL RULE.

Before Cuming and Page JJ.

SALAM CHAND KANNYRAM

v.

BHAGWAN DAS CHILHAMA.*

1926

April 19.

Interlocutory Orders—Civil Procedure Code (Act V of 1908), s 115, applicability of.

A Rule having been obtained for revision of an interlocutory order passed by a subordinate Court :—

Held, per CURIAM that the Rule must be discharged.

Per CUMING J. To decide a case is to decide the whole case, and not to decide a part of the case. Therefore, section 115 of the Code of Civil Procedure has no application to interlocutory orders.

Moti Lal v. *Nana* (1), *Harsuran Singh* v. *Muhammad Raza* (2) and *In re Nizam of Hyderabad* (3) followed.

The High Court does not interfere as a general rule in revision where the aggrieved party has another and adequate remedy.

Per PAGE J. The High Court has jurisdiction under section 115 of the Code of Civil Procedure to revise interlocutory orders passed by subordinate Courts from which no appeal lies to the High Court.

Dhapi v. *Ram Pershad* (4) and other cases referred to.

It is only when irremediable injury will be done, and a miscarriage of justice inevitably will ensue if the Court holds its hand that the Court ought to interfere in current litigation, and disturb the normal progress of a case by revising an interlocutory order that has been passed by a subordinate Court.

CIVIL RULE obtained by Salam Chand Kannyram against the opposite party under section 115 of the Code of Civil Procedure.

* Civil Rule No. 158 of 1926, against the order of A. D. Gupta, Subordinate Judge of Nadia, dated Feb. 10, 1926.

(1) (1892) I. L. R. 18 Bom. 35.
(2) (1881) I. L. R. 4 All. 91.
(3) (1886) I. L. R. 9 Mad. 256.
(4) (1887) I. L. R. 14 Calc. 768.

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The short facts and arguments appear from the judgments of the learned Judges and, therefore, they are not repeated here.

Dr. Dwarka Nath Mitra and *Babu Haradhan Chatterjee*, for the petitioner.

Babu Hira Lal Chakravarti, for the opposite party.

CUMING J. The facts of the case out of which this Rule has arisen are these. The petitioner who obtained the Rule brought a suit on the Original Side of this Court against the opposite party for Rs. 52,582 odd on the 27th November 1922. On the 25th June 1923 he applied that certain properties of the opposite party might be attached before judgment. These properties were apparently in the district of Nadia though that is not stated in the petition where the facts are set out very incompletely. The properties were duly attached on the 12th July 1923. The suit was decreed on the 18th February 1924. There was no appeal. Then on some date, which again it is impossible to ascertain either from the petition or from the learned counsel who has appeared for the petitioner, the decree was sent to the District Court at Nadia for execution, and the property was advertised for sale on the 8th February 1926.

A claim was then filed in the executing Court on the 26th January 1926 by one Bhugwan Das alleging that the property belonged to him. The petitioner then appeared and objected that the Nadia Court had no jurisdiction to entertain the claim.

That Court held that it had jurisdiction to entertain the application, and ordered the parties to produce their evidence.

Against this order of the learned Subordinate Judge the petitioner has moved this Court under

section 115 and obtained this Rule. It has been contended by the opposite party that the order being an interlocutory order cannot be dealt with under section 115.

Speaking for myself, and with great respect to the learned Judges who have held otherwise, I have no hesitation in holding that section 115, Civil Procedure Code, has no application whatever to interlocutory orders. Let us take the plain words of the section 115 the material portion of which runs as follows:—

"The High Court may call for the record of any "case which has been decided ..... and in which no "appeal lies thereto." The expression thus used is the record of a case which has been decided. The only meaning which I can attach to the expression "a case which has been decided" is the whole case.

If we are to suppose that the expression "case" means or includes, for instance, one issue in the case, then the section would run as follows:—

"The High Court may call for the record of any issue which has been decided by any Court."

It is perhaps difficult to say where the record of an issue that had been decided would be found. I have not myself the slightest doubt but that the Legislature where it speaks of the case that had been decided meant the whole case which so far as the Court dealing with it was concerned had been finally dealt with.

I can conceive of the High Court sending for the record of the case. I cannot conceive of its sending for the record of an issue. The words seem perfectly plain. To decide a case is to decide the whole case, and not to decide a part of the case. I am, therefore, of opinion that section 115 has no application to interlocutory orders.

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This is the view which has commended itself to the High Courts of Bombay, Allahabad and Madras. *Moti Lal* v. *Nana* (1), *Harsaran Singh* v. *Muhammad Raza* (2), *In re Nizam of Hyderabad* (3).

The reason seems self-evident. To allow revision of interlocutory orders would have at once the effect of two Courts trying more or less simultaneously the same suit, a cumbersome and expensive procedure. For if one interlocutory order can be dealt with under section 115, every interlocutory order can be the subject of an application under section 115. Our attention has, however, been drawn to a number of decisions of this Court which apparently hold the contrary view.

I think that I should now consider the present case in the light of those decisions. The earliest case I have been referred to is the case of *Dhapi* v. *Ram Pershad* (4). Mr. Justice Norris in disposing of this case held that the word "*case*" in section 622, Civil Procedure Code (now section 115), is wide enough to include an interlocutory order, and the words "*record of any case*" include so much of the proceedings in any suit as relate to the interlocutory order. The learned Judge in coming to the conclusion referred to a number of cases in which a contrary view was taken.

Mr. Justice Tottenham concurred in making the Rule absolute, but he seemed to doubt whether the matter could be dealt with under section 622 (now section 115).

The next case to which I have been referred is the case of *Chandi Ray* v. *Kripal Ray* (5). Mr. Justice

(1) (1892) I. L. R. 18 Bom. 35.
(2) (1881) I. L. R. 4 All. 91.
(3) (1886) I. L. R. 9 Mad. 256.
(4) (1887) I. L. R. 14 Calc. 768.
(5) (1911) 15 C. W. N. 682.

Woodroffe in dealing with that case referred to the case of *Dhapi* v. *Ram Pershad* (1) and remarked :

"Speaking for myself I should have thought that interlocutory orders did not come within the scope of this section. It is unnecessary to decide the point for reasons with which I shall deal later on".

The learned Judge refused to interfere on the ground that there was another and adequate remedy open to the petitioner. We are then referred to the case of *Gobind Mohun Doss* v. *Kunja Behary Doss* (2), where Mr. Justice Mookerjee held that if the Court is satisfied that an interlocutory order has been made without jurisdiction, or under circumstances that are likely to cause irreparable injury to one of the litigants, the High Court could set it aside under section 15 of the Charter (now section 107 of the Government of India Act). The learned Judge refused to consider the point as to whether it could come under section 115, Civil Procedure Code.

I have next been referred to the case of *Amjad Ali* v. *Ali Hussain* (3). There the same learned Judge Mr. Justice Mookerjee, relied apparently on the case of *Gobind Mohun Doss* v. *Kunja Behary Doss* (2) and stated that it was pointed out in that case that the test to be applied was whether irreparable injury would be caused to one of the litigants if the matter was not set right.

The learned Judge apparently dealt with the matter under clause 15 of the Charter, which corresponds to section 107, Government of India Act. It will be noted that the test the learned Judge would apply in that case is more limited than the test the same learned Judge applied in the case of *Gobind*

(1) (1887) I. L. R. 14 Calc. 768. (2) (1909) 10 C. L. J. 407 ; 14 C. W. N. 147.

(3) (1910) 15 C. W. N. 353.

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Mohun Doss v. *Kunja Behary Doss* (1). Whether section 107 of the Government of India Act has any application it is not necessary to discuss. Speaking for myself, and with great respect to the learned Judge, I do not think it has. It is sufficient for the decision of the present Rule to accept the test as laid down in *Amjad Ali* v. *Ali Hussain* (2). Applying it to the present case there is no ground whatever for interference. The petitioner by the order of the learned Judge holding he has jurisdiction to determine the matter has suffered no irreparable injury. In fact he has suffered no injury at all, for it is quite possible that the Judge may decide the claim case ultimately in his favour.

There is a further reason for not interfering. Even if ultimately unsuccessful in his claim case the plaintiff has a further and adequate remedy for he can bring a suit. This Court does not interfere as a general rule in revision where the aggrieved party has another and adequate remedy.

The result is that this Rule must be discharged with costs.

PAGE J. On the 27th November 1922 the petitioner instituted a suit on the Original Side of the High Court against a firm trading under the name and style of Jugal Kishore Ramdeo for the recovery of Rs. 52,582-11-9, the price of goods sold and delivered. On the 12th July 1923 Greaves J. passed an order for the attachment before judgment of the properties in dispute, and pursuant thereto the said properties were attached. On the 18th February 1924 Buckland J. decreed the plaintiff's claim in the suit; and from that decree no appeal has been preferred. Subsequently, the decree was transferred for execution to

(1) (1909) 10 C. L. J. 407; 14 C. W. N. 147.

(2) (1910) 15 C. W. N. 353.

the Court of the District Judge of Nadia, and in execution of the decree a sale of the property was fixed for the 8th February 1926. On the 26th January 1926 the opposite party preferred a claim to the property under Order XXI, rule 58. Thereupon, the petitioner filed an objection to the opposite party's claim *inter alia* upon the ground that the Court had no jurisdiction to entertain the application. The Subordinate Judge of Nadia, having heard the parties, on the 8th February 1926 decided that the Court of Nadia had jurisdiction to entertain the opposite party's application under Order XXI, rule 58, and ordered notice to be served upon the parties that the claim case would be tried on the merits on the 13th February 1926. The decree-holder has now obtained this Rule under section 115 of the Civil Procedure Code.

The questions which fall for determination are: (i) has the Court jurisdiction under section 115 to revise the order of which complaint is made, and (ii) if the Court is competent to do so, ought the Court in the exercise of its discretion to interfere with the said order?

Now, the order under consideration, although not subject to appeal, is an interlocutory order, and it has strenuously been argued before us that inasmuch as the Court is entitled to exercise its power of revision under section 115, Civil Procedure Code, only in respect of a "case which has been decided", the Court is not empowered to revise an interlocutory order which *ex concessis* does not determine the rights of the parties. Indeed, it is alleged that so far from the case having been decided it has not yet even been heard and, therefore, under section 115 the Court has no jurisdiction to entertain the present Rule.

There is, I think, force in this contention, and some authority in its favour; *Buddhu Lal* v. *Mewa*

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Ram (1), *Bai Rami* v. *Jaga Dullabh* (2), *In re Nizam of Hyderabad* (3) and *per* Woodroffe J. in *Chandi Ray* v. *Kripal Ray* (4); but the matter is not *res integra*, and it is now well settled, at any rate in this Court, that the High Court has jurisdiction under section 115 to revise interlocutory orders passed by Subordinate Courts from which no appeal lies to the High Court; see *Dhapi* v. *Ram Pershad* (5), *Gobind Mohun Doss* v. *Kunja Behary Doss* (6), *Siva Prasad Ram* v. *Tricomdas Coverji Bhoja* (7), *Sm. Sarajubala Debi* v. *Mohini Mohan Ghosh* (8), *Secretary of State for India* v. *Narsibhai Dadabhai* (9), *Soma Sundaram Chettiar* v. *Manicka Vasaka Desika Gnana Sammanda Pandara Sannidi* (10), *Jagannatha Sastri* v. *Sara Thambal Ammal* (11), *Nauratan Lal* v. *Wilford Joseph Stephenson* (12), and *Ralla Ram* v. *Mussammat Raj* (13). In my opinion the matter is concluded by authority and I am the less disposed to re-agitate the question, or to cavil at the law as it now stands, because I deem it to be of great importance that the powers of revision with which the Court is entrusted should not be restricted, [see *Bai Atrani* v. *Deepsing Baria Thakor* (14)], and even if I were not of this opinion very cogent arguments would have to be forthcoming to induce me to acquiesce in any limitation of the Court's authority. *Estboni judicis ampliare jurisdictionem.*

The second question then arises, namely, are the circumstances of this case such that the Court in the

(1) (1921) I. L. R. 43 All. 564.
(2) (1919) I. L. R 44 Bom. 619.
(3) (1886) I. L. R. 9 Mad. 256.
(4) (1911) 15 C. W. N. 682.
(5) (1887) I. L. R. 14 Calc. 768.
(6) (1909) 10 C. L. J. 407; 14 C. W. N. 147.
(7) (1915) I L. R. 42 Calc. 926.
(8) (1924) 28 C. W. N. 991.
(9) (1923) I. L. R. 48 Bom. 43.
(10) (1907) I. L. R. 31 Mad 60.
(11) (1922) I. L. R. 46 Mad. 574.
(12) (1918) 4 Pat. L. J. 195.
(13) (1921) 4 L. L. J. 71.
(14) (1915) I. L. R. 40 Bom. 86.

exercise of its discretion ought at this stage in the proceedings to intervene in the claim case, and to revise the order in dispute? In my opinion, clearly not. The present Rule appears to me to be premature, for it may be that in the event the claim case will be dismissed; and it is also misconceived, for if the claim of the opposite party is allowed it will be open to the petitioner to challenge the title of the successful claimant in a separate suit (Order XXI, rule 63); and, in my opinion, it is only when irremediable injury will be done, and a miscarriage of justice inevitably will ensue if the Court holds its hand, that the Court ought to intervene in current litigation, and disturb the normal progress of a case by revising an interlocutory order that has been passed by a subordinate Court.

For these reasons, in my opinion, this Rule is misconceived, and should be discharged with costs.

B. M. S. *Rule discharged.*