

## CIVIL RULE.

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*Before Mukerji and Graham JJ.*

KASISWAR RAY

v.

SATYA BHAMA DAS.\*

1926

Dec. 14.

*Review—Application for Review, where to be made.*

The same Judge who dismisses a proceeding for default is the Judge who is competent to hear an application for review of the order dismissing the proceeding for default, though he was the Second Subordinate Judge when he dismissed the proceeding for default and is the First Subordinate Judge at the same place when the application for review is made.

*Bachu Koer v. Golab Chand* (1), *Munshi Muhammad Kazemali v. Munshi Niamuddin Ahmed* (2) and *Jajannath Prasad Singh v. Sheonandan Sahay* (3), relied on.

### CIVIL REVISION CASE.

The petitioners instituted in the Second Subordinate Judge's Court a proceeding to get a sale held in execution of a decree in a suit valued over Rs. 9,000 set aside. The petition was dismissed for default on the 20th March, 1926. The petitioner then filed an application for review of that order on the 19th April, 1926. In the meantime the Subordinate Judge who dismissed the petition for default, was placed by the District Judge, on the 16th April, 1926, in charge of the First Subordinate Judge's Court. The application for review was, therefore, filed before the said officer in the First Subordinate Judge's Court. That officer, however, thought that

\* Civil Rule No. 556 of 1926, against the order of B. G. Chatterjee District Judge of Barisal, dated July 8, 1926.

(1) (1899) I. L. R. 27 Calc. 272.      (2) (1921) 26 C. W. N. 216.

(3) (1921) 6 P. L. J. 304.

the application should be filed in the Court of the Second Subordinate Judge and he returned the petition on the 3rd May, 1926, for being filed in proper Court. The application was, accordingly, refiled in the Court of the Second Subordinate Judge. Thereafter the petitioners applied to the District Judge of Backergunj praying for a transfer of the application to the then First Court of the Subordinate Judge. The District Judge refused the application, holding that he had no jurisdiction in the matter, inasmuch as the Second Court had no jurisdiction to entertain the application, in view of the provision of rule 2, Order XLVII of the Code and the application for review was pending in a Court which had no jurisdiction to entertain it.

The petitioners, judgment-debtors, thereupon moved the High Court, making the decree-holders the opposite party, and obtained this Rule.

*Babu Sureshchandra Talukdar*, for the petitioners, contended that the decisions relied upon by the learned District Judge do not apply to the facts of the present case, inasmuch as the application under Order XLVII, rule 1, of the Code of Civil Procedure was primarily filed before the learned Subordinate Judge who dismissed the suit.

For the sake of judicial administration of a district the District Judge divides the district into different parts and assigns to each Subordinate Judge jurisdiction over a particular area. The fact that the learned Subordinate Judge, who disposed of the suit originally, is not now presiding over that particular Court cannot divest him of his jurisdiction to hear an application for review as in the present case. See Act XII. B. C., of 1887 (Bengal Civil Courts Act). See also *Bachu Koer v. Golab Chand* (1), *Munshi*

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No one for the opposite party.

MUKERJI J. There was a proceeding under Order XXI, rule 90 of the Code of Civil Procedure for setting aside a sale. It was on the file of Mr. K. K. Sen, who was then the Subordinate Judge of the Second Court at Barisal. The proceeding was dismissed for default by Mr. K. K. Sen on the 20th of March, 1926. On the 16th of April, 1926, Mr. K. K. Sen was put in charge of the business attaching to the Court of the First Subordinate Judge of that district. On the 20th of April, 1926, the petitioners against whom the aforesaid order of dismissal for default was passed made an application under Order XLVII, rule 1 of the Code of Civil Procedure before Mr. K. K. Sen, who, as I have already said, had by this time become the presiding Judge of the First Court. This application was dealt with by Mr. K. K. Sen as the Subordinate Judge, First Court of Barisal, on the 3rd May, 1926, with the following order: "Let the petition be returned to the filing pleader, Babu Lakshmi Prasanna Banerji, for filing it in the proper Court." This order, it may be mentioned here, was passed on a note which was submitted by the office to the learned Judge and which was to the effect that it appeared from the order sheet that the petition had been filed in that Court by mistake because the miscellaneous case in question had been disposed of by the Subordinate Judge, Second Court, Barisal. On the same day the petitioners, in accordance with the order passed as aforesaid by Mr. K. K. Sen, re-filed the application in the Second Court and the Subordinate Judge who\*

(1) (1921) 26 C. W. N. 216.

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presided in that Court directed it to be registered and notices to issue on it upon the parties. Thereafter, presumably because the officer who was presiding in the Second Court would have no jurisdiction to deal with the petition by reason of the provisions of Order XLVII, rule 2 of the Code of Civil Procedure, an application was made by the petitioners before the District Judge of Backergunj praying for a transfer of the petition from the Second Court to the First Court. The learned District Judge by an order passed on the 8th July, 1926, refused the said application. He relied upon the decisions of this Court in the case of *Peary Lall Mozoomdar v. Komal Kishore Dassia* (1), and *Ram Narain Joshy v. Parmeswar Narain Mahla* (2); as supporting the view that he took, namely, that inasmuch as the petition was then pending in a Court which had no jurisdiction to deal with it, there could be no order of transfer made by him in respect of that petition. The petitioners have now moved this Court and obtained a Rule to show cause why the case should not be transferred to the First Court of the Subordinate Judge or why such other or further order should not be passed as to this Court may seem fit and proper.

The opposite party has not entered appearance in this Rule. We have, therefore, looked into the matter as carefully as we could and we have come to the following conclusion.

The petition in the present case was filed before the officer who had dismissed the previous proceedings for default. He was asked by this petition to review his own order. The only difficulty which apparently struck the learned Subordinate Judge as being insurmountable was that whereas he had dealt with the original proceedings and dismissed them for

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(1) (1880) I. L. R. 6 Calc. 30. (2) (1897) I. L. R. 25 Calc. 39.

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default as the Judge of the Second Court, when the petition was presented before him he had now become the Judge of the First Court. Looking at the provisions of the Bengal Civil Courts Act (XII of 1887) it seems to me to be clear that, under section 3 of that Act, it is the Court of the Subordinate Judge which forms a class of Civil Courts within the meaning of that Act, and under section 13, sub-section (1), the Local Government fixes the local limits of the jurisdiction of any Civil Court under that Act. The particular officer who had dismissed the original proceedings was, no doubt, at the time when he passed that order, the presiding Judge of the Second Court, and when the application for review was presented before him he had become the presiding Judge of the First Court. That apparently was by reason of the provisions of clause (2) of section 13 which empowers a District Judge to assign to each of the Subordinate Judges such civil business as is cognizable by a Subordinate Judge. By assigning some particular civil business to the learned Judge and thus arranging for the administration, the District Judge could not have divested the learned Judge of the jurisdiction which had been conferred on him by the Local Government under the provisions of sub-section (1) of section 13. The view we take of the matter is in accord with what was expressed in the cases of *Bachu Koer v. Golab Chand* (1), *Munshi Muhammad Kazemali v. Munshi Niamuddin Ahmed* (2) and *Jagannath Prasad Singh v. Sheonandan Sahay* (3). In our opinion, the learned Subordinate Judge was in error in supposing that because he had by the 20th of April, 1926 become the Subordinate Judge of the First Court of Barisal, that there was any impediment in his way in dealing with the application

(1) (1899) I. L. R. 27 Cal. 272.

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for review that was presented before him and, in our opinion, he should not have returned the petition. We are also of opinion that the learned District Judge was in error in supposing that, under the peculiar circumstances of the present case, the authorities upon which he relied and which have been referred to above can possibly have any application. Those two are cases in which, so far as can be gathered from the reports, the proceedings were originally laid in a Court which had no jurisdiction and in that way the cases are clearly distinguishable from the case now before us. We are of opinion that the matter should be dealt with by Mr. K. K. Sen, who, we are told, is at present the Subordinate Judge of the First Court of the district of Barisal.

We accordingly set aside the order passed by the District Judge refusing to transfer the case and we direct that the petition under Order XLVII, rule 1, which forms the subject matter of these proceedings, be now transferred to the file of Mr. K. K. Sen, so that he may deal with and dispose of it in accordance with law.

The opposite party not having appeared in this Rule, we make no order as to costs.

GRAHAM J. I agree.

S. M.

*Rule absolute.*

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