ORIGINAL CIVIL.

Before Lort-Williams J.

GULABCHAND BANGUR
v.
KABIRUDDIN AHMED.*

1930

Feb. 21, 25; *Mar.* 6.

Jurisdiction—Revision—Code of Civil Procedure (Act V of 1908), s. 115.

Where the Small Cause Court disregarded a consent decree of the High Court on which the rights of the parties were founded, it acted in the exercise of its jurisdiction illegally.

Clause (c) of section 115 of the Code of Civil Procedure contemplates cases other than those referred to in clauses (a) and (b) of that section and is not limited to questions of jurisdiction.

Amir Hassan Khan v. *Sheo Baksh Singh* (1) and *Balakrishna Udayar* v. *Vasudeva Ayyar* (2) discussed and distinguished.

Baldeodas Lohia v. *Balmukund Brijmohan* (3), *Malkarjun* v. *Narhari* (4) and *Mohunt Bhagwan Ramanuj Das* v. *Khetter Moni Dassi* (5) referred to.

APPLICATION by the defendant.

The facts, out of which this application arose, are set out in the judgment.

S. N. Banerji for the plaintiff.

H. D. Bose and *M. N. Kanjilal* for the defendant.

Cur. adv. vult.

LORT-WILLIAMS J. This is an application under section 115 of the Civil Procedure Code.

The facts are extremely simple.

The defendant is the plaintiff's tenant under the terms of an agreement embodied in a consent decree of this Court, dated the 13th May, 1925, of which the following is the only relevant term :—

After the repairs of the said premises are completed, the defendant will be entitled to occupy his former rooms, but will pay in respect thereof such sum as will be found payable upon a calculation being made at the rate of rent paid by other tenants at the same floor. In case of any difference, the amount of rent will be settled by Mr. Susil C. Sen, Solicitor.

*Application in Small Cause Court Suit No. 18377 of 1927.

(1) (1884) I. L. R. 11 Calc. 6 ; L. R. 11 I. A. 237.

(2) 1917) I. L. R. 40 Mad. 793 ; L. R. 44 I. A. 261.

(3) (1929) I. L. R. 57 Calc. 612.

(4) (1900) I. L. R. 25 Bom. 337 ; L. R. 27 I. A. 216.

(5) (1897) 1 C. W. N. 617.

1930

Gulabchand Bangur v. Kabiruddin Ahmed.

Lort-Williams J.

In accordance therewith, the plaintiff claimed a rent of Rs. 160, upon the basis of the rent paid by other tenants. The defendant refused to pay, contending that there were no *bona fide* tenants on the same floor, upon the basis of whose rent the rate could be fixed.

Thereupon, in July, 1926, Mr. Sen settled the rent at Rs. 150. Subsequently, Mr. Sen's settlement was filed in Court as an award, which obviously it was not,—with the result that, on the 22nd July, the Court declared the so-called award to be null and void, and ordered it to be taken off the file.

On the 10th August, 1926, the Controller of Rent, under the provisions of the Calcutta Rent Act, fixed the standard rent of the premises in question at Rs. 145 and, on the 19th February, 1927, the President of the Improvement Trust Tribunal, on appeal, reduced the standard rent to Rs. 125. On the 31st March, 1927, the Rent Act expired. Thereupon, the parties were relegated to the agreement which existed between them before the provisions of the Rent Act were applied to the premises, and plaintiff claimed *inter alia* for arrears of rent at the rate settled by Mr. Sen in accordance with the terms of the consent decree.

The learned Judge of the Small Cause Court, who heard the suit, after stating that the facts were more or less admitted, entirely disregarded the High Court decree, on the ground apparently that the so-called award had been set aside, and proceeded to decide what was the agreement between the parties prior to the consent decree.

The defendant did not give evidence, but this did not prove to be any obstacle to the learned Judge, who decided in favour of defendant's contentions, mainly upon the allegations contained in his written statement.

The plaintiff applied to the Full Bench for a new trial, which court, after correctly stating the facts about the consent decree and Mr. Sen's settlement,

1930

Gulabchand Bangur v. Kabiruddin Ahmed.

Lort-Williams J.

came to the somewhat strange conclusion that "the "High Court declared Mr. Sen's proceedings to be a "nullity, and the plaintiff, therefore, cannot rely on "them," and apparently deduced therefrom that the learned trial Judge was right when he disregarded the consent decree.

Having arrived at this conclusion, the court proceeded to state that "the learned judge, having "before him the admissions of the defendant and "the standard rent, apparently decided what was "the reasonable rent" and that this being a question of fact, was for him to determine. But the learned judge did nothing of the kind, either apparently or otherwise. The truth is that both courts misapprehended entirely the effect of the judgment, which simply declared the document filed to be null and void as an award, and ordered it to be removed from the file of the Court. It did not purport to affect the consent decree or Mr. Sen's settlement made thereunder. That being so, there was in full force and effect a decree of this Court fixing the rent at Rs. 150, and this decree, both courts of the Small Cause Court, acting as they did under a complete misapprehension, entirely disregarded. It is clear that there has been a miscarriage of justice.

The question is, whether the plaintiff has any remedy. Section 115 is as follows :—

The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears—

(*a*) to have exercised a jurisdiction not vested in it by law, or

(*b*) to have failed to exercise a jurisdiction so vested, or

(*c*) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit.

It has been decided that the jurisdiction exercised by the High Court under this section is revisional only and not appellate, a distinction which I have considered fully already in *Baldeodas Lohia* v. *Balmukund Brijmohon* (1).

(1) (1929) I. L. R. 57 Calc. 612.

1930

Gulabchand Bangur v. Kabiruddin Ahmed.

Lort-Williams J.

In my opinion, clause (*c*) contemplates cases other than those referred to in clauses (*a*) and (*b*). The words in clause (*c*) did not occur in the Code of 1877, and were introduced for the first time in the amending Act of 1879. They are intended to refer to cases where the court has jurisdiction and has exercised it, but has acted illegally or with material irregularity in the exercise of it.

The most that can be said to have been decided by the Privy Council in the leading case of *Amir Hassan Khan* v. *Sheo Baksh Singh* (1) was that where a court has jurisdiction to decide the question before it, and in fact decides such question, it cannot be said to have exercised its jurisdiction illegally or with material irregularity "only" on the ground that it has arrived at a wrong decision. "A Court has jurisdiction to "decide wrong as well as right." *Malkarjun* v. *Narhari* (2).

In my opinion, the meaning of the decision of their Lordships of the Privy Council is that where the subordinate court has applied its mind to a question of law and has arrived at an erroneous conclusion in the exercise of its jurisdiction, this alone is not a ground for revision under the section. In the present case neither of the courts below applied their minds to the question what was the effect of the consent decree and Mr. Sen's settlement thereunder, because, owing to a mistake, both were under the impression that the settlement had been declared a nullity and, therefore, that the agreement alleged to be contained in the consent decree was incomplete and was of no avail to the plaintiff, as evidence of an agreement by which the rent had been fixed.

Owing to this mistake, both courts have disregarded wholly, and have failed to give effect to a decree of this Court. Their failure was not due in any way to erroneous conclusions in law or in fact, but merely to accident. Neither court had any intention of disregarding this decree. Their action

(1) (1884) I. L. R. 11 Calc. 6; L. R. 11 I. A. 237.

(2) (1900) I. L. R. 25 Bom. 337 (347); L. R. 27 I. A. 216 (225).

was involuntary, but nevertheless it has involved them, in my opinion, in illegality within the meaning of the section.

It is not necessary for me to decide, generally, what is an illegality or material irregularity within the meaning of the section, and if I attempted to do so, my conclusions would amount only to *obiter dicta.* But the case of *Amir Hassan Khan* v. *Sheo Baksh Singh* (1) only decided what an illegality or material irregularity is not—and, in my opinion, their Lordships of the Privy Council in the case of *Balakrishna Udayar* v. *Vasudeva Ayyar* (2) did not, and did not intend to say that section 115 applies only to cases in which the question of jurisdiction is involved—and if they did so intend, their statement was merely *obiter*. The passage runs as follows:— "It will be observed that the section applies to "jurisdiction alone, the irregular exercise, or non-"exercise of it, or the illegal assumption of it. The "section is not directed against conclusions of law or "fact in which the question of jurisdiction is not "involved."

It is clear that this is not intended to be a full description of the application of the section. If it were, then it would allow no further meaning to clause (*c*) than is contained in clauses (*a*) and (*b*)—which obviously would be erroneous. As was said by the learned Judges who decided *Mohunt Bhagwan Ramanuj Das* v. *Khetter Moni Dassi* (3), it is not easy to frame any clear rule for the proper construction of clause (*c*), except the negative one to which I have referred. But I agree with them that "the clause is "intended to authorise the High Courts to interfere "and correct gross and palpable errors of subordinate "courts, so as to prevent grave injustice in non-"appealable cases; and it seems advisedly to have been "expressed in indefinite language, from the difficulty "of defining exactly the classes of cases which may "stand in need of such extraordinary interference."

(1) (1884) I. L. R. 11 Calc. 6; L. R. 11 I. A. 237.
(2) (1917) I. L. R. 40 Mad. 793; L. R. 44 I. A. 261.
(3) (1897) 1 C. W. N. 617, 626.

1930

Gulabchand Bangur v. Kabiruddin Ahmed.

Lort-Williams J.

It is enough for me to say that, in my opinion, the courts below, in disregarding a decree of this Court, have acted in the exercise of their jurisdiction illegally.

It is not necessary for me to send the case back, because I have all the materials before me to enable me to give a decision.

The plaintiff is entitled to rent at the agreed rate of Rs. 150 from the 31st March, 1927. The result is that, in addition to the sums already decreed, he is entitled to a further sum of Rs. 425.

The application is allowed with costs including costs in the courts below.

Application allowed.

Attorneys for plaintiff: *Dutt & Sen.*
Attorney for defendant: *M. H. Haq.*

O. U. A.