APPELLATE CIVIL.

Before Mr. Justice Innes and Mr. Justice Kernan.

1878. July 26.

MÁHADEVA RÁYAR (PLAINTIFF) APPELLANT *v.* SAPPANI (6TH DEFENDANT) RESPONDENT (1).

Review—Act VIII of 1859, *Secs.* 376 *to* 378.

Where a Judge has, in deciding a case, omitted to consider the effect of important documentary evidence filed with the plaint which was not taken issue upon, and which materially affects the merits of the case, he is competent under Sections 376 to 378 of Act VIII of 1859 to grant a review and rehear the case.

SECOND Appeal against the decree of the Subordinate Judge of Cuddalore, in Regular Appeal No. 154 of 1876.

M. Párthasárathi Áyyangar for the Appellant.

The Respondent did not appear.

The facts fully appear in the following

JUDGMENT:—This case comes before the Court on (second) appeal from the decision of the Subordinate Judge of Cuddalore. The plaintiff is the appellant; the respondent has not appeared before us.

This suit is brought to recover from defendants the possession of lands alleged to have been let on lease by plaintiff's father to the father of first, second, third, fourth, and his brothers the fifth and sixth defendants. Plaintiff filed a number of pattas, issued to his ancestors from Fasli 1238 to 1260, and pattas in plaintiff's name for Fasli 1283—1284, and also a rent-deed (lease) executed by plaintiff's father to the father of defendants first, second, third, fourth, of the properties in dispute, dated the 27th December 1864, marked in the suit A, and another prior lease between the same parties, dated 31st March 1850, marked B. Plaintiff's father died six or seven years before suit. Defendants alleged that the properties were their own; that they had been acquired by their grandfather; and that the pattas were issued in the name of plaintiff's grandfather only nominally;

(1) Second Appeal No. 285 of 1878, against the decree of D. Irvine, Subordinate Judge of Cuddalore, dated 9th January 1878, reversing the decree of the District Munsif of Villapuram, dated 25th April 1876.

and that, fifteen years before the suit, plaintiff's father had carried away portions of the produce, and that, on complaint before the Collector, the plaintiff's father was ordered not to interfere with the land, and was directed to give the produce taken to the sixth defendant. Defendants pleaded limitation.

The issues framed were

1. "Whether the property in dispute is the plaintiff's patrimony and the patta issued in the name of plaintiff and others, or whether it is the defendant's patrimony and the patta was caused to be issued in the name of the plaintiff's grandfather nominally."

2. "Whether the lease A is genuine or fictitious."

3. (In substance same as No. 1).

4. "Whether plaintiff is entitled to the rent claimed by him."

At the hearing before the District Munsif the execution of A was proved by several witnesses for the plaintiff, and that the property belonged to plaintiff and others but was leased to the defendants, and that the defendants and their ancestors held on lease. Witnesses were examined for the defendants, and proved the enjoyment by possession of the defendants, but not any particular right as the Judge says, and they proved a dispute about fifteen years before suit, and that the Collector made the order before stated and referred plaintiff's father to a civil action.

The District Munsif dismissed the suit on the ground that the rent-deed A was not genuine, and that plaintiff's claim was barred by limitation. In his judgment, dated 25th September 1875, the Munsif recorded his views to the effect that the defendants had long possession, and that plaintiff had not proved that rent had been collected by his father; and that as there was a dispute about fifteen years before suit, it was not probable that A should have been executed by the father of the defendants 1, 2, 3, 4; and he observed that the witnesses to A lived in different villages, and, though the deed purported to be executed at Villapuram, the writer alone of A lived in Villapuram. The Munsif further recorded that "though the properties may be plaintiff's patrimony as asserted by him, yet the plaintiff and others have forfeited possession for a long time; that, with a view to obtain possession, plaintiff has fabricated A."

On the 2nd of October 1875 a petition for review was presented to the Munsif on the ground that the rent-deed B, filed with the plaint, dated 31st March 1850, between the same parties as to A

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was not disputed, or, as it was put, no issue was taken upon it; and on the ground that another rent-deed, dated 20th March 1850, was executed between the same parties (and produced with the petition of review) though not filed with the plaint, inasmuch as the deed B was so filed. The petition of review was opposed on the ground that it contained no sufficient ground for review. Upon the hearing of that petition the Munsif recorded his opinion that as no issue had been settled in respect of B, it was necessary to ascertain the truth as to the alleged execution of B, and allowed a review, considering the grounds stated in the petition. The rent-deed, 20th March 1850, was then allowed to be filed and was marked Q.

The defendants having disputed the alleged deeds B and Q, an issue was framed—

"Whether the documents B and Q are genuine?"

The case was retried, the witnesses on both sides re-examined, and judgment pronounced by the Munsif on all the issues in favor of plaintiff. On the re-trial the deeds B and Q were proved, and the Munsif, in his judgment on the re-trial, after referring to proof of B and Q, says: "The bond A sued on being now attentively looked into, it is therein stated that the said deed of Swamibogam was executed on a compromise being made when plaintiff's father attempted to have recourse to a civil action in pursuance of the Magistrate's order, as asserted by the defendants' and many of plaintiff's witnessess. In this case there are three bonds of Swamibogam passed at different times. The said three bonds have been satisfactorily proved by plaintiff's witnesses." "On careful consideration of all these circumstances, together with the evidence of the witnesses at the primary trial, I have to differ entirely from my former opinion." Against the revised decree an appeal was presented to the Subordinate Judge of Cuddalore on the grounds following:—

1. "That there was no sufficient reason for review of the Munsif's first judgment.
2. "The defendant's plea was proved."
3. "That plaintiff's claim was barred by limitation."

The Subordinate Judge, on the 9th of January 1878, gave judgment, deciding that the Munsif had acted *ultra vires* in granting the review; that there was no sufficient reason for his granting it; and that there was no mistake or error on the record

to justify the review; and referred to *Roy Meghraj* v. *Beejoy Gobind Burral*, (1) and following (as he says in his judgment) that case, he decided that the order granting the review was illegal, and set it and the decree on re-hearing aside, and restored the original decree. This second appeal is brought against the decree of the Subordinate Judge on the ground that his decision was wrong in point of law, inasmuch as there was sufficient reason to justify the order of review, and that the Munsif exercised a discretion in making the order for review, with which the Subordinate Judge should not have interfered. Sections 376 to 380, Act VIII of 1859, govern the case.

The decree of the Subordinate Judge must be set aside, and the case remanded to be heard by him on appeal from the revised decree and judgment of the Munsif of the 25th of April 1876.

The Subordinate Judge has erroneously considered that the decision in *Roy Meghraj* v. *Beejoy Gobind Burral* (1) governs this case. The facts of that case are by no means similar to those of this case. There the facts were that a succeeding Judge, at the request of one of the parties, took up a case previously heard and determined by his predecessor, and on which a decree was passed, and having re-heard in detail what his predecessor had heard in detail, reversed the decision. There was no suggestion that all the evidence and documents had not been duly considered by his predecessor, or that the facts brought the case within those contemplated by sections 376 to 380 of Act VIII of 1859. No wonder that the High Court, in giving judgment, said "nothing can be more unsatisfactory than the manner in which the case has been dealt with. If such proceedings are legal, a suit may go on for ever." The Court went into the question of the circumstances under which review may be granted, but did not lay down any construction of, or principle of construction of, the sections 376 to 380 (within which this case is) to justify the application of any part of that decision to the facts of this case (except, indeed, that if the review was granted on document Q alone, it would have been wrong, which is quite clear on the act, it having been in plaintiff's possession before the suit.)

At page 199 the Court, after referring to sections 376 and 378, says: "In section 378 the grounds indicated are the correction of

(1) I.L.R. 1, Calc., 197.

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an evident error or omission, or its being *otherwise* requisite for the ends of justice." The Court then gives two illustrations of what is called in the report patent errors, and adds, "in such cases, and in any other in which there has been a clear and evident slip or error on the part of the Judge, a review may be rightly admitted. In short the object of a review is either to admit new evidence or to enable the Judge to rectify any patent error, whether of fact or of law, into which he has fallen." Referring to sections 376-378 the Court says, "But it is a well-known rule of law, that, in interpreting Acts of the legislature, general words are controlled by particular words; and we are of opinion that the general words used in these two sections are controlled and restricted by the particular words, and that it is only the discovery of new evidence, or the correction of an evident (*i.e.*, patent and indubitable) error or omission, or some other particular ground of *like description*, which justifies the granting a review. In the present case none of the grounds specified existed, nor did any of the *like description*."

Now we cannot understand any of the passages quoted, or any other passages in the report, to have any application to facts such as are to be found in this case. Here the Judge who tried the case has decided that A was false, principally or partly on the ground that it bears date at or about a time when there was a dispute in reference to the lands comprised in it between the parties to the deed, and he therefore considered it improbable that A should have been executed.

In the review petition his attention was called to B, a prior rent-deed between the same parties, dated fourteen years before the dispute and before A was executed, which prior deed was filed *with the plaint*, and was therefore not got up after the decision, and which contained a lease of the same lands. This deed, the Judge was informed by the review petition, was not taken issue upon. It was pretty clear that, if that document was genuine, such fact would prove the dealings between plaintiff's father and the defendants in respect of the lands as landlord and tenants, and that an enquiry into its genuineness would much assist the ends of justice. If genuine, it would go far to show that plaintiff's case as to A was not improbable, which was the view that the Munsif first entertained. Again on looking carefully into A, the Munsif saw

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that it recited a compromise between the plaintiff's father and the father of the first, second, third and fourth defendants. This recital the Munsif had not noticed when he first heard the case, and when he did see it, it tended to explain further how it came that A was executed about the time of the dispute.

It appears to us that within the provision "for good and sufficient reason" in section 376, and within the provisions "or otherwise necessary for the ends of justice" in section 378, the Munsif was not only justified, but was bound to admit the review, feeling, as he did, that it was necessary to ascertain whether his first decision was correct or not.

Appellant to have his costs of the Lower Appellate Court and this Court against the defendants.

Suit remanded.

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Before Mr. Justice Kernan and Mr. Justice Muttusámi Áyyar.

1878. September 16.

SURYAPRASAKA RÁU (PETITIONER) *v.* **VAISYA SANNYÁSI-RÁZU** (COUNTER PETITIONER) (1).

Decree—Execution—Bond—Registration Act XX of 1866—*Act X of* 1877, *Sections* 588 *and* 622.

An application was made to a District Munsif, on the 16th July 1877, to issue execution on a decree dated 6th November 1869, obtained on a bond registered under Section 53 of the Registration Act of 1866. He made an order refusing execution, the decree being one passed not in a regular suit, but in a summary suit, and governed by the period of limitation prescribed by Art. 166, Sch. II, Act IX of 1871. On appeal the Subordinate Judge reversed the order of the Munsif, holding that Art. 167, Sch. II of Act IX of 1871 applied.

On application to the High Court, *Held* that as Section 588 of Act X of 1877 provided that orders passed in appeal from orders under Section 244 should be final, no second appeal lay. *Held* also, that under Section 622 of Act X of 1877 the High Court could not interfere, as the Subordinate Judge had jurisdiction to hear the appeal.

THIS was a petition under Section 622 of the Civil Procedure Code (Act X of 1877), against the order of the Subordinate Judge

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(1) Civil Miscellaneous Petition No. 109 of 1878, presented under Section 622 of Act X of 1877, against the order of C. Rámachandra Áyyar, Subordinate Judge of Chicacole, dated the 3rd December 1877, reversing the order of the Court of the District Munsif of Chicacole, dated 17th August 1877.