

1876.

HINGAN
KHAN
v.
GANGA
PARSHAD.

Our attention has been drawn to a case decided by a Bench of this Court (1), where a somewhat similar question was before the Court, but there is this distinction between the two cases, that in the one referred to the special appeal had been decided after trial, whereas in the case before us the appeal was withdrawn without trial.

STUART, C. J.—I have signed this judgment because I think that, under the circumstances of this case, it is right. But I wish to add that I am not to be understood as approving the practice of inserting conditions into decrees as to the time of payment or otherwise, notwithstanding the rulings of this Court to the contrary referred to.

1876
August 23.

CIVIL JURISDICTION.

(*Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Turner.*)

IN THE MATTER OF THE PETITION OF MATHRA PARSHAD.*

Stat. 24 and 25 Vic., c. 104 (High Courts' Act), s. 15—Powers of Superintendence of High Court—Act VIII of 1859, s. 378—Review of Judgment.

Where a Court subordinate to the High Court rejected an application for a review of judgment, refusing to consider the grounds of the same because the decree of which a review was sought was given by its predecessor, the High Court, in the exercise of its powers of superintendence under s. 15 of the High Courts' Act, directed such Court to consider the grounds (2).

This was an application to the High Court for the exercise of its powers under s. 15 of the High Courts' Act. The petitioner applied on the 13th September, 1875, to the Subordinate Judge of Mainpuri for the review of a judgment which that officer's predecessor had given on the 18th December, 1874. The Subordinate Judge rejected the application in the following terms: "Upon a perusal of the petition with the record of the case, it appeared that the judgment of the former Subordinate Judge is not correct, but I have no right to interfere with his judgment, nor has the peti-

* Miscellaneous Application, No. 25B of 1876, against an order of the Subordinate Judge of Mainpuri, dated the 5th January, 1876.

(1) *Shaikh Ewaz v. Mokuna Bibi*, I. L. R., 1 All. 132.

(2) For other cases in which the High Court interfered under that section, and directed the exercise of a power or jurisdiction disclaimed by a subordinate

Court, see note to *Tej Ram v. Harsukh*, I. R. L., 1 All. 104. For cases in which it refused to interfere, see the same note and *Petition of Luhhykant Bose*, I L. R., 1 Calc., 180; S. C., 24 W. R. 440.

tioner produced any new evidence. The objections of the petitioner have been determined by the former Subordinate Judge."

The *Junior Government Pleader* (Babu *Dwarkanath Banarji*), for the petitioner.

Pandit *Nand Lal*, for the opposite parties.

The order of the High Court was as follows :

It is obvious that the Subordinate Judge has misconceived the duty imposed on him. The circumstance that the decree, of which a review was sought, was passed by his predecessor did not discharge the Subordinate Judge from the obligation of considering whether any sufficient grounds were shown for the application. Where a subordinate Court has obviously failed to perform its duty, and there is no remedy by appeal, it appears to us within the competency of this Court, under the general powers of superintendence with which it is invested under s. 15 of the Letters Patent, to point out to the subordinate Court its error and to direct it to proceed according to law. The Subordinate Judge is therefore directed to reconsider the application presented to him, and to deal with it as if a review was sought of a decree which he had himself passed.

APPELLATE CIVIL.

(*Mr. Justice Turner and Mr. Justice Oldfield.*)

BISHAN DIAL AND ANOTHER (DEFENDANTS) v. MANNI RAM (PLAINTIFF)*

Mortgage—Foreclosure—Regulation XVII of 1806.

Where the whole of a mortgage-debt was due to the persons claiming under the mortgage jointly and not severally, and a person, entitled only to one moiety of the debt, foreclosed the mortgage as to that moiety, and sued the different mortgagors for possession of a moiety of their interests in the mortgaged property, in virtue of the mortgage and foreclosure, *held* that the foreclosure was invalid and the suits were not maintainable.

This was a suit in which the plaintiff claimed from Gulab Rai and Bishan Dial possession of a 4-anna share in a certain zemindari estate, in virtue of a deed of conditional sale dated the 13th December, 1864, and an order foreclosing the mortgage dated the 11th April, 1874. The facts of the case are sufficiently

* Special Appeal, No. 1320 of 1875, against a decree of the Judge of Cawnpore, dated the 16th September, 1875, affirming a decree of the Subordinate Judge, dated the 30th January, 1875.

1876

IN THE MAT-
TER OF THE
PETITION OF
MATHRA
PARSHAD.

1876

August 24.