

It will be observed that throughout Act IX. of 1871 a distinction is made between suits, appeals and applications. It is to be found in the preamble of the Act, and again notably in s. 4, and in the second schedule, which prescribes the period of limitation applicable to three divisions of subjects, suits, appeals and applications, amongst the last of which are found enumerated applications for executions of decrees.

I think Act IX. of 1871 clears up what was obscure in Act XIV. of 1859, under which the word suit may have been used in a wide sense, so as to include an application to enforce execution of a decree.

The title of Act XIV. of 1859 is an "Act to provide for the limitation of suits," and the preamble is "whereas it is expedient to amend and consolidate the laws relating to limitation of suits, it is enacted as follows :—" but the title and preamble of Act IX. of 1871 differ materially, Act IX. of 1871 being "an Act for the limitation of suits and for other purposes," and it recites, "whereas it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts, &c." Whereas in Act IX. of 1871 suits and applications are separately treated, the word suit cannot, I apprehend, be held to mean and include an application.

BEFORE A FULL BENCH.

(Mr. Justice Turner, Officiating Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, and Mr. Justice Oldfield.)

TEJ RAM AND OTHERS (AUCTION-PURCHASERS) v. HARSUKH (JUDGMENT-DEBTOR).

*Stat. 24 and 25 Vic., c. 104, s. 15—Powers of Superintendence of High Court
—Revision of Judicial Proceedings—Jurisdiction.*

The High Court is not competent, in the exercise of the powers of superintendence over the Courts subordinate to it conferred on it by s. 15 of 24 and 25 Vic., c. 104, to interfere with the order of a Court subordinate to it on the ground that such order has proceeded on an error of law or an error of fact.

Where, therefore, on appeal by the judgment-debtor against an order confirming a sale of immoveable property in the execution of a decree, the lower Court set aside the sale, on a ground not provided by law, and the auction-purchasers

1875.

JIVAN SINGH
v.
SARNAM
SINGH.

1875.
August 10.

1875.

applied under the above-mentioned section to the High Court to cancel the lower Court's order, the High Court refused to interfere (1).

THE RAM
V.
HARSUKH.

THIS was an application to the High Court by the purchasers at a sale of immoveable property in the execution of a decree for the cancelment, as being contrary to law, of the order of the lower Court setting aside the sale. The application purported to be made under s. 15 of 24 and 25 Vic., c. 104; the auction-purchasers contending that the High Court was empowered to interfere under that section. The question of jurisdiction raised by this contention was referred by the Division Bench (Stuart, C. J., and Oldfield, J.) before which the application came for hearing to the Full Bench.

It appeared that, on appeal by the judgment-debtor from the order of the first Court confirming the sale, the lower Court of appeal had set aside the sale on the ground that no notice of the application for the execution of the decree had been served on the representative of the original party to the suit against whom execution was sought, in accordance with the provisions of s. 216, Act VIII. of 1859.

Mr. Ross, the *Junior Government Pleader* (Bábu Dwarka Náth Banarji), Pandit Ajudhia Náth, and Bábu Oprokash Chandar for the auction-purchasers.

Mr. Conlan and Pandit Bishambar Náth for the judgment-debtor.

The *Junior Government Pleader*.—This application is made with reference to *R. V. Koshti v. Náráyan Dhuláppá* (2). If your Lordships refuse to interfere in cases like the present much mischief will ensue. The lower Court might as well have set aside the sale on the ground that it was opposed to Scotch law as on the ground it has set it aside. Your Lordships can interfere under s. 15 of the High Courts' Act. The first part of the section gives the High Court the power of "superintendence" as distinct from the power it gives it to "call for returns."

Mr. Conlan.—The High Court cannot interfere; *Da Costa v. Hall* (3) is an authority exactly in point.

(1) Compare *In the matter of Durga Charan Sirkar*, 2 B. L. R. A. C. 165, and see also *In the matter of Khowaz Ram Bux Singh*, 23 W. R., 402, in which the Calcutta High Court similarly refused to interfere with an order of the lower appellate Court upholding a sale. (2) 3 Bom. H. C. R. A. C. J., 110. (3) 1 R. C. and C. R., Civil Rulings, 165: s. c. 5 W. R. Misc. 25.

The opinion of the Full Bench was as follows :—

It is not contended that an appeal lies to this Court from the order of the Judge, or that under the Code of Civil Procedure this Court has any power of interference. It is argued that the Court is authorized to exercise jurisdiction in the matter in virtue of the provisions of 24 and 25 Vic., c. 104, s. 15.. These provisions have frequently been urged as justifying the interference of this Court with orders of a Subordinate Court, on the grounds that the order of the Subordinate Court has proceeded on an error of fact or law, and that no further appeal is given by the Code, and so far as we are aware the Court has uniformly declined jurisdiction.

The provisions of s. 9 of the Statute above-mentioned declare that High Courts established under the Act shall have and exercise all such civil, &c., jurisdiction, &c., and all such powers and authority for, and in relation to, the administration of justice, &c., as Her Majesty may by Letters Patent grant and direct; and that save as by such Letters Patent may be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court to be established in each Presidency shall have and exercise all jurisdiction and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under the Act at the time of the abolition of such last-mentioned Court.

By the Letters Patent of this Court Her Majesty was pleased to confer on it extraordinary original civil jurisdiction and appellate civil jurisdiction, but she conferred on it no powers of revision in civil suits or matters arising there-out. In these matters the Court has no other power or authority than that enjoyed by the Sudder Dewanny Adawlut of these Provinces at the time of its abolition, unless such power is derived from the 15th section of the Statute. The Sudder Dewanny Adawlut certainly had no power to exercise judicial functions in any case in which its right of interference was not declared by the law of India, and no provision of any Indian Act is cited as conferring on the Sudder Dewanny Adawlut authority to interfere on an application of the nature of that which is now preferred to the Court.

The petitioners then can rely only on the provisions of 24 and 25 Vic., c. 104, s. 15, which declare that the High Courts established

1875.

TEJ RAM
v.
HARSUKH.

1875.

TEJ RAM,
v.
HARSUKH.

under the Act shall have "superintendence" over all Courts which may be subject to its appellate jurisdiction, and consequently it is contended that the term superintendence confers jurisdiction to revise the proceedings of the Subordinate Civil Courts.

We cannot allow this contention. Whether we consider the ordinary significance of the term or construe it in connection with the context, it appears to us to confer on the High Court no revisional power, no power to interfere with or set aside the judicial proceedings of a Subordinate Court, but that it confers on the High Court administrative authority and not judicial powers; as we construe the term (1), it would be competent to the High Court in the exercise of its power of superintendence to direct a Subordinate Court to do its duty or to abstain from taking action in

(1). The statement of the law here given seems on the whole to be in conformity with the view taken in a long series of cases by the Calcutta High Court. That Court has held

(a) that it may interfere, under s. 15 of the High Courts' Act, to direct the exercise of a power or jurisdiction disclaimed by the lower Court — see *Gobind Coomar Chowdhry v. Kisto Coomar Chowdhry*, 7 W. R. 520; s. c. 2 Ind. Jur. N. S. 199: *Greesh Chunder Lahooree v. Kasheessuree Debia*, 8. W. R. 26: *Omar Chand Mahata v. Nawab Nazim of Bengal*, 11 W. R. 229: *Collector of Bogra v. Krishna Indra Roy*, 2 B. L. R. A. C. 301: *Petition of Sankar Dobay*, 4 B. L. R. A. C. 65: *Hardayal Mandal v. Tirthanand Thakur*, 4 B. L. R. App. 28: *Khenunkuree Dabee v. Rancee Shurui Soonduree Dabee*, 14 W. R. 9: *Munohur Paul v. J. P. Wise*, 15 W. R. 246: *Petition of Rani Umusundari Debi*, 5 B. L. R. App. 29: *Petition of Srimati Nassir Jan*, 7 B. L. R. 144: *Haris Chandra Gupto v. Srimati Shashi Mala Gupti*, 6 B. L. R. 721: but see *Petition of Hurehur Mookerjee*, 20 W. R. 202.

(b) that it may interfere to set aside an order made by the lower Court without jurisdiction — see *Joy Ram v. Bulwant Singh*, 5 W. R. Misc. 3: *Bhyrub Chunder Chunder v. Shama Soonderee Debia*, 6 W. R., Act X. Rulings, 68: *Judooputtee Chatterjee v. Chunder Kant Bhuttacharjee*, 9 W. R. 309: *Petition of Bunkobeharry Ghose*, 11 W. R. 26: *Petition of Maharaja Dhiraj Mahtab Chand Bahadur*, 2 B. L. R. A. C. 217: *Deep Chand v. Gowree and Beharee*, 13 W. R. 98: *Rooknee Roy v. Amrith Lall*, 14 W. R. 254: *Tarini Charan Mookerjee v. Raja Purna Chandra Roy*, 6 B. L. R. 717: *Mir Habib Sobhan v. Mahendra Nath Roy*, 2 B. L. R. App. 32: *Amra Nashya v. Gagan Shutar*, 2 B. L. R. App. 35: *Haris Chandra Gupto v. Srimati Shashi Mala Gupti*, 6 B. L. R. 721.

(c) that it should not interfere merely on the ground that an order made by a Court having jurisdiction is erroneous — see *Petition of Pearee Lal Sahoo*, 7 W. R. 130: *Janokee Bulub Sein v. Dukhina Mohun Chowdhry*, 7 W. R. 519: *Showdaminee Dossee v. Manich Ram Chowdhry*, 9 W. R. 386: *Mahomed Busheeroolah Chowdhry v. Ramkant Chowdhry*, 9 W. R. 394: *Jumal Ali v. Shaikh Wahed Ali*, 11 W. R. 97: *Petition of Jodoo Moonce Dossee*, 11 W. R. 494: *Petition of Durga Charan Sirhar*, 2 B. L. R. A. C. 165: *Sreemutty Dossee v. Sreemibash Dey*, 12 W. R. 74: *Asrafannissa Begum v. Syad Inuet Hossein*, 5 B. L. R. 316: s. c. 13 W. R. 439: *Doorga Soonduree Debia v. Kashee Kant Chuckerbutty*, 14 W. R. 212: *Kalee Hur Doss v. Roodressur Chuckerbutty*, 15 W. R. 90: *Khorshed Ali v. Chowdhry Wahid Ali*, 15 W. R. 170: *Petition of Kasnath Roy Chowdhry*, 7 B. L. R. 146: *Hur Kishore Audhicary v. Sudoy Chunder Nundee*, 17 W. R. 80: *Petition of Munnoo Singh*, 19 W. R. 306: *Petition of Bagram*, 20 W. R. 10: *Khowaz Ram Buz Singh v. Bishendharee Geer*, 23 W. R. 402: *Ajonnissa Bibi v. Surja Kant Acharji*, 2 B. L. R. 181: see, however, *Maharaja Dhiraj Mahtab Chand Bahadur v. Shagor Kundu*, 5 B. L. R. App. 91: *Petition of Mathuranath Chuckerbutty*, 9 B. L. R. 351.

matters of which it has not cognizance, but the High Court is not competent in the exercise of this authority to interfere and set right the orders of a Subordinate Court on the ground that the order of the Subordinate Court has proceeded on an error of law or an error of fact. It is true that some cases may be found in the reported decisions of other High Courts, in which it appears that Judges have claimed in virtue of the right of superintendence given them by the Statute to exercise larger powers than we believe are conferred by the provisions of that law, but the practice of this Court has accorded with the views expressed by us, and on the construction we put on the Statute we are not at liberty to disturb it.

The record will be returned to the Bench with this expression of our opinion.

BEFORE A FULL BENCH.

1875.
August 27.

*(Mr. Justice Turner, Officiating Chief Justice, Mr. Justice Pearson, and
Mr. Justice Spinkie.)*

DEBI PARSHAD AND OTHERS (DEFENDANTS) v. THAKUR DIAL AND OTHERS
(PLAINTIFFS)*.

Hindú Law—Undivided Hindú Family—Inheritance.

When, in an undivided Hindú family living under the Mitakshara law, a brother dies without leaving issue, but leaving brothers, and nephews, the sons of a predeceased brother, the interest in the joint estate of the brother so dying does not pass on his death to his surviving brothers, but on partition the whole estate, including the interest of the brother so dying, is divisible; and the right of representation secures to the sons or grandsons of a deceased brother the share which their father or grand-father would have taken, had he survived the period of distribution.

Madho Singh v. Bindessery Roy (1) over-ruled.

Durga, Bisheshar, Bhairo, and Ram Pargas were four brothers united in estate. Ram Pargas died leaving sons who were the plaintiffs in this suit. Then Durga and Bhairó died without issue. Finally Bisheshar died leaving sons who were the defendants in the this suit.

(1) H. C. R., N.-W. P., 1862, p. 101.

* Regular Appeal, No. 38 of 1875, from a decree of the Subordinate Judge of Benares, dated the 15th December, 1874.