

APPELLATE CIVIL.

1879
March 23*Before Mr. Justice Pearson and Mr. Justice Oldfield.*MADHO DAS AND OTHERS (PLAINTIFFS) v. RUKMAN SEVAK SINGH AND
OTHERS (DEFENDANTS).**Act VIII of 1859 (Civil Procedure Code), s. 377—Review of Judgment—Limitation.*

The plaintiff in a suit applied, more than two years after the proper time, for a review of the judgment in such suit, filing with his application a copy of a decision by the High Court, which had been passed subsequently to the date of such judgment, in support of a contention contained in his application which should have been, but was not, urged at the hearing of his suit. Such contention and the other arguments and statements contained in his application might have been adduced within the time allowed by law for an application for a review of judgment. *Held* that, as such contention might have been urged at the first hearing of the case, there was no "just and reasonable cause" for preferring the application after time, and the Court of first instance was therefore not warranted in granting the application and reviewing its judgment.

THE facts of this case were as follows: On the 9th May, 1868, one Rajnit Kuar, as the guardian of her minor son, Rukman Sevak Singh, borrowed jointly with one Ajudhia Prasad Singh certain moneys from one Harakh Chand, and gave him a bond for the payment of such moneys, which charged amongst other properties certain immoveable property belonging to Rukman Sevak Singh with the payment of such moneys. This bond was executed by Ajudhia Prasad Singh for himself and as attorney of Rajnit Kuar. In March, 1873, Harakh Chand sued to enforce payment of this bond. The Subordinate Judge, on the 23rd August, 1873, gave the plaintiff a decree against Ajudhia Prasad Singh, who confessed judgment, but refused to pass a decree against the minor or his property, on the ground that his mother had no power to borrow money on his behalf or to alienate his property without the permission of the District Court, which had granted her a certificate of administration under Act XL of 1858 in respect of her minor son's property. On the 3rd November, 1875, Harakh Chand applied for a review of this judgment, stating that he did so, "with reference to evidence which could not be adduced either when the case was decided or within the period allowed by law." The application pointed out that Rajnit Kuar had not as the Subordinate Judge considered been

* Regular Appeal, No. 23 of 1877, from a decree of Rai Bakhtawar Singh, Subordinate Judge of Benares, dated the 29th November, 1876.

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granted a certificate of administration under Act XL of 1858 in respect of her minor son's property, but a certificate under Act XXVII of 1860 to collect the debts of her deceased husband, and that the High Court on the 13th August, 1875, had decided, in a suit by one Kishna Ram against the defendants in the present suit, that Rajnit Kuar did not stand in need of obtaining permission from the District Court to borrow money on behalf of her minor son or to alienate his property, as she had not been empowered by the District Court under Act XL of 1858 to administer his estate. A copy of this decision by the High Court was the new evidence on which the plaintiff relied. The Subordinate Judge admitted the application, and, notwithstanding that the minor was not then properly represented in the suit, reheard it, and on the 29th November, 1876, in review of his first judgment, gave the plaintiff's representatives, the plaintiff having meanwhile died, a decree against the minor's property, observing that the minor might sue to have the acts of his mother set aside when he became of age, if he had been injured by them.

The plaintiff's representatives appealed against this decree to the High Court, contending that the minor should have been properly represented in the suit, and the Subordinate Judge then should have determined whether the charge which they sought to enforce on his property was valid or not.

Munshi *Hanuman Prasad*, for the appellants.

Mr. *Ross* and Munshi *Kashi Prasad*, for the respondents.

The judgment of the Court was delivered by

PEARSON, J.—This appeal has been pending here for more than two years because one of the defendants, respondents, *viz.*, Rukman Sevak Singh, who is a minor, was not properly represented. He is now at last represented by Dip Narain Singh, who has been duly appointed his guardian, and the appeal is ready for hearing. The appeal relates to a judgment passed by the lower Court on the 29th November, 1876, in review of a former judgment dated 23rd August, 1873. The decree is in favour of the plaintiffs, appellants; but one of the grounds of the appeal is that the minor aforesaid was not duly represented in that Court. An objection has been taken by the counsel for the guardian of the minor on his behalf that

the review was improperly granted more than two years after the date of the judgment originally passed in the suit, without any sufficient explanation of the long delay in making the application for review. We have considered the objection, and are of opinion that it is valid and must be allowed.

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The application for review of the judgment passed on the 23rd August, 1873, bears the date of the 3rd November, 1875, and the explanation which it offers of the delay of more than two years in preferring it is that fresh evidence has come to hand, which could not be adduced either when the case was decided or within the period allowed by law. The evidence so tendered was a copy of a judgment of this Court dated 13th August, 1875, in regular appeal No. 151 of 1874, Ato Kuar and Rajnit Kuar herself and as guardian of Rukman Sevak Singh, minor, defendants, appellants, v. Kishna Ram, plaintiff, respondent. In that case, in reference to a transaction then in question between the parties aforesaid, the Court remarked that the minor's mother was competent to act in the transaction as his guardian, and, as she had not been empowered to administer his estate by the Civil Court, was not bound to obtain its sanction to her proceedings. The object of filing the judgment containing the remark aforesaid was to support the contention that the minor was bound by the mortgage-deed executed by his mother as his guardian in the present case. The judgment so filed was not properly speaking evidence at all. It was merely authority in support of a contention which should have been urged upon the Subordinate Judge when hearing the case in the first instance.

We do not say that the grounds set out in the application for review were not good grounds for granting a review, nor can they be called in question. But, however good they were, the application could not be granted unless just and reasonable cause were shown to the satisfaction of the Court for not having preferred it within the time allowed by the law. In this case no such just and reasonable cause was shown. The reference to this Court's judgment dated 13th August, 1875, was a mere blind. The argument to which that judgment gave countenance and the other arguments and statements contained in the application might have been adduced within the proper time.

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The lower Court was not therefore warranted in granting the application and reviewing its former judgment of 23rd August, 1873. We accordingly allow the objection taken here on behalf of the minor respondent, and dismiss the appeal with costs, and set aside the judgment and decree dated the 29th November, 1876.

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April 17.

CIVIL JURISDICTION.

Before Mr. Justice Pearson and Mr. Justice Olfield.

SULTAN KUAR (JUDGMENT-DEBTOR) v. GULZARI LAL (DECREE-HOLDER).*

Execution of Decree—Sale of a Money-decree—Act X of 1877 (Civil Procedure Code), ss. 166, 273.

Held that Act X of 1877 does not contemplate the sale of a decree for money as the result of its attachment in the execution of a decree, and the attachment of a decree for money in the mode ordained in s. 273 cannot lead to its sale.

Held also that the last clause but one of s. 273 applies to other than money-decrees.

Where two decrees for money, although they were not passed by the same Court, were being executed by the same Court, *held* that the provisions of the first clause of s. 273 of Act X of 1877 were applicable on principle.

THIS was a reference to the High Court, under s. 617 of Act X of 1877, by Mr. R. F. Saunders, District Judge of Farukhabad. One Sultan Kuar, on the 8th August, 1878, obtained a decree against one Lahro Bai and certain other persons for Rs. 500, in the execution of which she caused certain immoveable property to be attached as the property of the judgment-debtors. One Gulzari Lal objected to the attachment of this property, claiming it as his own, and on the 14th September, 1878, the Court to which the decree had been sent for execution ordered that the attachment should be removed, and that Sultan Kuar should pay the costs of the objection, which amounted to Rs. 25 or thereabouts. Gulzari Lal, in order to enforce payment of this amount, caused Sultan Kuar's decree to be attached in the execution of the order dated the 14th September, 1878. Sultan Kuar objected to the sale of her decree on the ground that Act X of 1877 did not contemplate the sale of a decree for money. The Court of first instance disallowed the objection and directed that the decree should be sold. Sultan Kuar

* Reference, No. 1 of 1879, by R. F. Saunders, Esq., Judge of Farukhabad.