CIVIL REVISIONAL.

1887
November 26.

Before Mr. Justice Mahmood.

SHEO PRASAD SINGH (PETITIONER) *v.* KASTURA KUAR (DECREE-HOLDER).*

Jurisdiction, presumption of—Maxim, Omnia praesumuntur rite et solemniter esse acta—*Civil Procedure Code, ss.* 103, 283, 647—*High Court's power of revision—Civil Procedure Code, s.* 622.

The consideration of an objection under s. 278 of the Civil Procedure Code, having first been entertained and adjourned by an Additional Subordinate Judge, subsequently came before the Subordinate Judge, who struck off the case for default. No order under s. 25 transferring the case to the Subordinate Judge was on the record, nor was it otherwise shown how he obtained jurisdiction to deal with it.

Held that the High Court, in the exercise of its revisional powers under s. 622 of the Code, should not presume that the Subordinate Judge had taken up the case without jurisdiction; that the proper remedy of the petitioner was an appliation under s. 103, read with s. 647, or a suit under s. 283; and that the High Court should not interfere in revision.

The facts of this case are sufficiently stated in the judgment of Mahmood, J.

Pandit *Sundar Lal,* for the petitioner.

Mr. *G. T. Spankie,* for the respondent.

MAHMOOD, J.—This is an application presented to this Court invoking its interference, as a Court of revision, by exercise of the authority conferred upon it by s. 622 of the Civil Procedure Code. The facts from which this application has arisen may briefly be recapitulated to be the following :—

One Musammat Kastura Kuar obtained a money decree against one Musammat Jelaba Kuar on the 16th July, 1884, and in execution of the decree the property to which this litigation relates was attached on the 30th November, 1886, as the property of the judgment-debtor. These proceedings of attachment admittedly took place in the Court of the Additional Subordinate Judge of Ghâzipur, and it was in that Court that the present petitioner, Babu Sheo Prasad, filed an application on the 30th March, 1887, objecting to the attachment mainly upon the ground that the judgment-debtor was not the owner of the property attached. Indeed, Pandit *Sundar Lal,* on behalf of the petitioner, concedes that the application was of the character contemplated by s. 278 of the Code of Civil Procedure.

* Miscellaneous application No. 187 of 1887.

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It appears, then, that Rai Cheda Lal was the Additional Subordinate Judge of Gházipur, and we find that, on the 10th May, 1887, he adjourned the hearing of the application. Another adjournment was made by his order of the 4th June, 1887, and then the case appears to have come on for hearing, not before the Additional Subordinate Judge, Rai Cheda Lal, but before Pandit Kashi Narain, who is the Subordinate Judge of the District, and by his order of the 14th June, 1887, the hearing of the application was once more adjourned. The order says that the pleaders for the parties having departed, the case was to come on for hearing the next day, *i.e.*, the 15th June, 1887. What happened then is best represented by the order of the learned Subordinate Judge himself, and it runs as follows:—

"The case came on to-day again, and the pleaders have departed. Ordered that the case should be struck off for default." This order dated the 15th June, is the one of which revision is prayed for in this application.

The application originally came on before the learned Chief Justice, who, by his order of the 9th August, 1887, directed notice to be issued to the opposite party to "show cause why the order of Pandit Kash. Narain, dated the 15th June, 1887, should not be set aside on the ground that it was made without jurisdiction, and why the case should not be restored to the list of the additional Subordinate Judge for disposal."

In obedience to this order Mr. *Spankie* has appeared to show cause on behalf of the opposite party, and the learned counsel has, among other things, relied upon a preliminary contention which aims at showing that in the due exercise of its revisional powers this Court should not interfere. In the first place, the learned counsel contends that the rule contained in the maxim *Omnia praesumuntur rite et solemniter esse acta* applied to this case, and that, until the contrary is shown, the order by the learned Subordinate Judge, Pandit Kashi Narain, of the 15th June, 1887, should be deemed to be an order passed with jurisdiction and in the manner the law contemplates.

To this argument the reply which Pandit *Sundar Lal*, on behalf of the petitioner, could make was that the only manner in which

the case could be within the jurisdiction of the Subordinate Judge was that a Court of appeal exercising its functions had transferred it under s. 25 of the Civil Procedure Code, and that the mere circumstance of the absence of such order from the record of the present case removed the presumption, and, indeed, proved, as the learned pleader contends, that the Subordinate Judge, Pandit Kashi Narain, had no jurisdiction to dispose of the case. The learned pleader has also argued that even if it be taken for granted that the learned Subordinate Judge and the Additional Subordinate Judge had concurrent jurisdiction over the matter, the circumtance that Rai Cheda Lal, the Additional Subordinate Judge, was seized of the case, would render the concurrent jurisdiction of the learned Subordinate Judge, Pandit Kashi Narain, ineffective in taking over a case and making orders thereon, of which case the Additional Subordinate Judge was already seized. In supporting this argument the learned pleader has used the analogy of the concurrent jurisdictions of the various Judges of this Court, and he has contended that as one Judge seized of a case cannot thereafter be deprived of it by another Judge, so even if the Additional Subordinate Judge and the Subordinate Judge did possess concurrent jurisdiction, one could not be deprived of his legal powers to adjudicate upon a case he was seized of.

So far as the latter part of this contention is concerned, I do not think it necessary to determine the point because, although the argument has been very ably put before me by Pandit *Sundar Lal*, I cannot help feeling that the answer Mr. *Spankie* relies upon renders its decision unnecessary in this case. Mr. *Spankie's* contention is that the want of jurisdiction upon which the whole argument proceeds must not be presumed. I think this is a sound argument, because it seems to me that the want of jurisdiction may arise owing to numerous classes of facts which are to be determined by the lower Courts and not by Courts of revision. There may be want of jurisdiction owing to territorial limits of jurisdiction, owing to the nature of the class of litigation, owing, perhaps, to an order such as s. 25 of the Civil Procedure Code contemplates, owing, perhaps, to the appointment of the Judge not being duly and lawfully made, owing to the cause of action having accrued at a place other than that where the litigation commenced,

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and owing to other numerous matters, such as the defendant's living in a foreign jurisdiction. In regard to the manner in which I understand the word "jurisdiction," I need only say that I have already given expression to my views in *Dhan Singh* v. *Basant Singh* (1) and that I still adhere to those views.

But the question is whether I, sitting here as a Court of revision, should enter into the various hypotheses and possibilities which may result in one answer or other as to the question of jurisdiction. Mr. *Spankie* contends that this Court should not exercise, under the circumstances, the discretionary powers it possesses under s. 622 of the Civil Procedure Code. Apart from the questions of fact which may have a bearing upon the question of jurisdiction, the learned counsel contends that the ordinary remedies which were open to the present petitioner have not been adopted by him, and that, therefore, this Court should not interfere in revision. The learned counsel contends with great force that the order of the 15th June, 1887, now sought to be revised was such as could have been passed under s. 102, read with s. 647, of the Civil Procedure Code, and that, indeed, the usual remedy open was to apply under s. 103 of the Civil Procedure Code for the restoration of the case and due adjudication thereupon. Further, the learned counsel argues that another remedy was open to the petitioner before asking this Court to revise the order complained of, and that remedy was a regular suit such as s. 283 of the Civil Procedure Code contemplates.

I am of opinion that this contention has force. The principles upon which the visitatorial functions of the Courts of revision, such as in this case, should be exercised were fully considered by Mr. Justice West in the case of *Shiva Nathaji* v. *Joma Kashinath* (2), in which, at the end of the judgment, certain conclusions are specifically enumerated. I have always entertained the greatest respect for the rulings of that eminent Judge, and I have more than once stated that this particular judgment was one deserving of the highest respect from the Indian Courts, and I adopted it in *Sundar Das* v. *Mansa Ram* (3), in which my brother Brodhurst concurred. The general effect of these rulings, as far as this case is concerned,

(1) I. L. R., 8 All. 519. (2) I. L. R., 7 Bom. 341.
(3) I. L. R., 7 All. 407.

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is to lay down general principles that the especial and extraordinary remedy by invoking the revisional powers of this Court should not be exercised unless as a last resource for an aggrieved litigant. In this case the ordinary remedies have not been adopted by the petitioner, and I do not think it is necessary for me, as a Court of revision, to go into the detail whether or not such facts exist as to justify the conclusion that the lower Court did not exercise jurisdiction.

Pandit *Sundar Lal* in an elaborate and able argument has, indeed, contended, as a matter directed to induce me to exercise the revisional powers of this Court, that the simplest course would be for me not only to decide matters of fact which would suggest one decision or other as to jurisdiction, but also to decide, even if there was jurisdiction, whether or not sufficient reasons existed for striking off the case in default. All I need say to this argument is that I do not think that the Legislature intended this Court, as a Court of revision, to exercise any such functions. I, therefore, decline to interfere in revision and dismiss the application with costs.

Application rejected.

APPELLATE CIVIL.

Before Mr. Justice Straight and Mr Justice Brodhurst.

CHAJJU (DEFENDANT) *v.* SHEO SAHAI (PLAINTIFF).*

1887
November 29

Pre-emption—Rival suits—Each pre-emptor made defendant in the other's suit—Suits tried together, but decided by separate decrees—Decree allowing pre-emption in one case only on condition of default by other pre-emptor—Finality of decree in superior pre-emptor's suit.—Appeal by inferior pre-emptor in his own suit—Appellate Court not competent to alter decree so as to affect superior pre-emptor's right.

In two rival suits for pre-emption each pre-emptor was made a defendant in the other's suit. The suits were tried together upon the same evidence and were disposed of by a single judgment, but by separate decrees. In one of the suits the pre-emptor obtained a decree in the terms of s. 214 of the Civil Procedure Code. In the other, the pre-emptor obtained a decree, subject to the condition that, in the event of the first pre-emptor failing to execute his decree, the second pre-emptor should be entitled to execute it. The decree in the first suit was not appealed, and became final. The second pre-emptor appealed from the decree in his own suit, upon the grounds that the amount ordered to be paid was excessive, and that the first pre-emptor had lost his right, and the decree in the second suit should not have been made subject to the condition above stated.

* Second Appeal No. 1427 of 1886 from a decree of H. G. Pearse, Esq., District Judge of Meerut, dated the 14th May, 1886, reversing a decree of Babu Brijpal Das, Subordinate Judge of Meerut, dated the 1st March, 1886.