

1892

GAURI  
SHANKAR  
v.  
BABBAN LAL.

we think that the principle of the decision of their Lordships of the Privy Council in *Raja Har Narain Singh v. Chaudhrai Bhagwant Kuar* (1) applies. We should say that there was here no extension of time, and that it was really the acts of the parties which caused the award not to be made within the time allowed. However, as s. 221 of Act No. XIX of 1873 enacts that the time for the delivery of the award *shall* be specified in the order of reference, we must give effect to it and hold that the award was bad. The proceedings on the award *must* be treated as null and void. We set aside those proceedings and refer this case back to the first Court, which will dispose of the suit according to law. Costs will abide the result.

*Cause remanded.*

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.*

1892

February 12.

KHARAG PRASAD BHAGAT AND ANOTHER (PLAINTIFFS) v. DURDHARI RAI AND OTHERS (DEFENDANTS).\*

*Jurisdiction—Dismissal of suit by Munsif on preliminary point—Demand by Subordinate Judge on appeal—Fresh appeal before second Subordinate Judge, who disagrees with the finding of the former Subordinate Judge.*

Where there are two Subordinate Judges in the same place, one of such Judges is not competent to overrule the decision of the other. The Court is one, though there are separate presiding officers. *Suraj Din v. Chattar* (2) and *Ram Kirpal v. Rup Kuari* (3) referred to.

The facts of this case sufficiently appear from the judgment of the Court.

The Hon'ble Mr. *Spankie* and *Munshi Jwala Prasad*, for the appellants.

Mr. *Amiruddin*, for the respondents.

EDGE, C. J., and TYRRELL, J.—This suit was instituted in the Court of the Munsif of Ballia, who dismissed the suit on the ground that the suit should have been brought in the Revenue Court, and

\* Second Appeal No. 1148 of 1889 from a decree of Pandit Bansidhar, Subordinate Judge of Ghazipur, dated the 28th August 1889, confirming a decree of Maulvi Abdul Ghafor, Munsif of Ballia, dated the 16th January 1889.

(1) L. R., 18 I. A. 51 s.c. I. L. R.,  
13 All. 300.

(2) I. L. R. 3 All. 755.

(3) I. L. R. 6 All. 269.

that consequently he had no jurisdiction. There was an appeal which was heard by one of the two Subordinate Judges of Gházipur. He decided that the suit was a Civil Court suit, and remanded the case under s 562 of the Code of Civil Procedure to the Court of that Munsif to be disposed of on the merits. The Munsif tried the case and passed a decree from which there was an appeal. The appeal happened to go to the other Subordinate Judge of Gházipur, who holding that the suit was a Revenue Court suit and could not have been brought in the Civil Court, allowed the appeal and dismissed the suit. The plaintiffs have brought this second appeal. It is contended on their behalf that the second Subordinate Judge of Gházipur had no power to question the legal propriety of the order of the other Subordinate Judge. It is really one Court, but there are two Subordinate Judges. On the other hand, it is contended that the decision of the last Subordinate Judge was right. We are clearly of opinion that Pandit Bansidhar, the second Subordinate Judge, had no power to overrule the decision of Mr. Lalta Prasad, the first Subordinate Judge, and that he was bound by it. That point was decided in this Court as far back as 1881 in the case of *Sar-j Din v. Chaltor* (1), which was a similar case. The principle which was enunciated by their Lordships of the Privy Council in *Rom Kirpal v. Rup Kuari* (2) would apply here. The Full Bench case of *Deokishen v. Bansi* (3) does not apply. The order which we must pass in this case is an order setting aside the decree of Pandit Bansidhar and remanding the case under s. 562 of the Code of Civil Procedure to the Court of the Subordinate Judge of Gházipur to be disposed of according to law. Mr. *Amiruddin's* clients, the defendants, will not be damnified, because, should the Subordinate Judge find against them on the merits, they can raise, in an appeal from his decree, the question of jurisdiction and of the correctness of the order of remand of Mr. Lalta Prasad. That they can do so under s. 591 is amply shown by a judgment of this Court in the case of *Kameshur Singh v. Sheodin Singh* (4), and by the High Court at Bombay in the case of *Savitri*

1892

---

 KHARAG  
 PRASAD  
 BHAGAT  
 v.  
 DURDHARI  
 RAI.

(1) I. L. R., 3 All. 755.

(3) I. L. R. 8 All. 172.

(2) I. L. R., 6 All. 269.

(4) I. L. R. 12 All. 510

1892

KHARAG  
PRASAD  
BHAGAT  
c.  
DURDHARE  
KIL.

v. *Ramji* (1). We set aside the decree of the Subordinate Judge, and remand the case under s. 562 of the Code of Civil Procedure, and direct it to be restored to the file of pending appeals in the Court of the Subordinate Judge. Costs will be costs in the cause.

*Cause remanded.*

1892

February 15.

*Before Mr. Justice Mahmood.*

BANDHU BHAGAT (DECREE-HOLDER) v. SHAH MUHAMMAD TAQI  
(JUDGMENT-DEBTOR).\*

*Civil Procedure Code, s. 577—Unverified sulahnamah—Execution of decree—Mortgage, redemption of—Decree not specifying result of non-payment of mortgage—debt within the time prescribed thereby for payment—Limitation—Act XV of 1877 (Indian Limitation Act), sch. ii, art. 179.*

Where an application purporting to contain the terms of a compromise was presented to the High Court by one of the parties to an appeal before it, but on the so called *sulahnamah* being sent down to the Lower Court for verification, it was found that the attendance of the parties for that purpose could not be procured;—*Held* that the High Court was not justified in passing a decree under s. 577 of the Code of Civil Procedure in accordance with the terms of the unverified *sulahnamah*.

Where a decree for redemption of mortgage stated that the amount due under the mortgage should be paid within four months, but omitted to state what the result would be if the mortgage debt was not so paid;—*Held* that it was competent to the decree-holder to execute such a decree at any time within the period of limitation prescribed by art. 179 of the second schedule of Act XV of 1877.

The facts of this case sufficiently appear from the judgment of Mahmood, J.

*Mr. Abdul Raouf*, for the appellant.

The respondent was unrepresented.

MAHMOOD, J.—In this case there is a preliminary matter which must be stated before I proceed with the judgment upon the merits of the appeal.

The case being a pending case upon the files of this Court, an application bearing date the 10th of March 1890, and purporting to

\* Second Appeal No. 1241 of 1889 from a decree of J. J. McLean, Esq., District Judge of Azamgarh, dated the 24th June 1889, confirming a decree of Rai Kulwant Prasad, Subordinate Judge of Azamgarh, dated the 17th July 1888.