1884

HARIHAR DAT v. SHEO PRASAD

The Court (STRAIGHT, Offg. C. J., and MAHMOOD, J.) delivered the following judgment:—

MAHMOOD, J.—It is a general rule of pre-emption that any act or omission on the part of a duly authorized agent or manager of the pre-emptor has the same effect upon pre-emption as if such act or omission had been made by the pre-emptor himself. The refusal of Kantika to purchase the property now in suit therefore debars the plaintiff from maintaining the present suit. The appeal is dismissed with costs.

Appeal dismissed.

CIVIL REVISIONAL.

1884
July 29.

Before Mr. Justice Mahmood and Mr. Justice Duthoit.

GULAB RAI (PETITIONER) *v.* MANGLI LAL (OPPOSITE PARTY).*

Civil Procedure Code, ss. 2, 54 (*c*), 582, 622—"*Decree*"—*Order rejecting plaint—Plaint held to include memorandum of appeal—Order rejecting appeal—Act XV of* 1877 (*Limitation Act*), *s.* 4.—*High Court's powers of revision.*

An order rejecting a memorandum of appeal as barred by limitation is a "decree" within the meaning of s. 2 of the Civil Procedure Code; it is therefore appealable, and not open to revision by the High Court under s. 622 of the Code.

Gajraj Singh v. *Bhagwant Singh* (1) and *Dianatullah Beg* v. *Wajid Ali Shah* (2) distinguished.

THE facts of this case are sufficiently stated in the judgment.

Babu *Jogindro Nath Chaudhri*, for the petitioner.

Pandit *Ajudhia Nath* and Munshi *Sukh Ram*, for the opposite party.

The Court (MAHMOOD and DUTHOIT, JJ.) delivered the following judgment:—

MAHMOOD, J.—This is an application under s. 622 of the Civil Procedure Code, for revision of an order of the District Judge rejecting an appeal as barred by limitation. The learned Pandit who has appeared on behalf of the opposite party has raised a preliminary objection that the order of the District Judge was a "decree" within the meaning of s. 2 of the Civil Procedure Code;

* Application No. 117 of 1884, for revision under s. 622 of the Civil Procedure Code of an order of T. B. Tracy, Esq., Officiating District Judge of Bareilly, dated the 4th January, 1884.

(1) Weekly Notes, 1883, p. 255. (2) I. L. R., 6 All. 438.

that it was appealable, and could not, therefore, be made the subject of revision.

There can be no doubt that "an order rejecting a *plaint*" is treated by the Code as a "decree," under the express words of s. 2, and the learned Pandit contends, that with reference to the provisions of the last paragraph of s. 582, the word "plaint," as used in s. 2, must be understood to include memorandum of appeal. He further contends that the first part of the definition of "decree" given in s. 2 is sufficiently broad to include orders such as the one now under consideration.

On the other hand, the learned pleader for the petitioner relies upon a ruling of a Division Bench in *Gajraj Singh* v. *Bhagwant Singh* (1), in which Stuart, C. J., and Tyrrell, J., held that an order rejecting a memorandum of appeal, for failure of the appellant to supply the deficiency of stamp, was not appealable as a decree. The case, however, is not on all fours with the present case, and whatever view we ourselves might have taken in that case, we do not regard it as governing the question now before us, though the *ratio decidendi* bears upon this case. The power exercised by the Judge in that case could have been exercised only under s. 54 (*b*), read with the last part of s. 582 of the Code, and the proposition of law laid down in that case may seem doubtful, but we are not directly concerned with the point decided in that case.

In the Civil Procedure Code there is no separate provision which allows the appellate Court to "reject" a memorandum of appeal on the ground of its being barred by limitation. S. 543 is limited to cases in which the memorandum of appeal is not drawn up in the manner prescribed by the Code, and it is only by applying s. 54 (*c*), *mutatis mutandis*, (as provided by the last part of s. 582), to appeals that the Code can be understood to make provision for rejection of appeals as barred by limitation. However, s. 4 of the Limitation Act clearly lays down that every "appeal presented after the period of limitation prescribed therefor shall be *dismissed*." It is therefore clear that the order of the District Judge in this case must be taken to be one which falls under the

(1) Weekly Notes, 1883, p. 255.

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definition of "decree" within the meaning of s. 2 of the Code, as the order, so far as the Judge was concerned, disposed of the appeal. We do not think any other view can give effect to the provisions of the Code, for we cannot hold that the Legislature intended such orders to be final.

The learned pleader for the petitioner, however, contends that the view which we have taken is inconsistent with the *ratio decidendi* of a recent ruling of this Court in *Dianatullah Beg* v. *Wajid Ali Shah* (1) to which one of us was a party. But the point decided in that case was different to the one now before us, and the question of interpretation there related to the language of the Limitation Act, and not to that of the Civil Procedure Code.

The order to which this application for revision relates was, therefore, appealable, and cannot be dealt with by this Court in revision under s. 622 of the Civil Procedure Code. The application is dismissed with costs.

Application rejected.

CRIMINAL REVISIONAL.

1884
July 31.

Before Mr. Justice Straight, Offg. Chief Justice, and Mr. Justice Duthoit.

QUEEN-EMPRESS v. GHULET AND ANOTHER.

Criminal Procedure Code, sch. V., No. XXVIII (4)—*Alternative charges*—*Act XLV of* 1860 (*Penal Code*), *s.* 193—*False evidence*—*Contradictory statements*—*Assignment of false statement not necessary.*

In a charge under s. 193 of the Penal Code, it is not necessary to allege which of two contradictory statements upon oath is false, but it is sufficient (unless some satisfactory explanation of the contradiction should be established) to warrant a conviction of the offence of giving false evidence to show that an accused person has made one statement upon oath at one time, and a directly contradictory statement at another. *R.* v. *Zumeerun* (2): *R.* v. *Palany Chetty* (3): and *R.* v. *Mahomed Hoomayoon Shaw* (4) followed: *Empress* v. *Niaz Ali* (5) overruled.

Per DUTHOIT J.—Every possible presumption in favour of a reconciliation of the two statements should be made, and it must be found that they are absolutely irreconcilable before a conviction can be had upon the ground that one of them is necessarily false.

The English cases upon this subject are irrelevant to the interpretation of the law of India, since the Indian Legislature has not followed the law of England

(1) I. L. R., 6 All. 438.
(2) 6 W. R. Cr. 65.
(3) 4 Mad. H. C. Rep. 51.
(4) 13 B. L. R. 324.
(5) I. L. R., 5 All 17.