1895
May 10.

REVISIONAL CIVIL.

Before Mr. Justice Knox and Mr. Justice Aikman.

ABDULLAH (PETITIONER) *v.* SALARU AND OTHERS (OPPOSITE PARTIES).*

Civil Procedure Code, section 622—*Statute* 24 *and* 25, *Vic., Cap.* 104, *section* 15—*Powers of superintendence exerciseable by the High Court.*

Where a Subordinate Court had signally failed to do its duty, and there had been no patent neglect on the part of the petitioner, *Held*, on an application for revision, that it is competent for the High Court under the general powers of supervision vested in it by section 15 of 24 and 25 Vic., Cap. 104, to direct the Subordinate Court to do its duty, and complete the case according to law. *Muhammad Suleman Khan* v. *Fatima* (1) referred to.

THE facts of this case are fully stated in the judgment of the Court.

Pandit *Sundar Lal* and Maulvi *Ghulam Mujtaba* for the applicant.

Messrs *T. Conlan*, *Roshan Lal* and Pandit *Moti Lal* for the opposite parties.

KNOX, J., and AIKMAN, J.—This is an application made by one Abdullah praying this Court to exercise, in respect of an order passed by the Subordinate Judge of Cawnpore, dated the 14th of May, 1894, the powers of revision vested in it under s. 622 of the Code of Civil Procedure, or the powers of superintendence conferred upon this Court by section 15 of statute 24 and 25 Vic., Cap. 104. The circumstances of the case are extraordinary, and the manner in which it has been dealt with by the Subordinate Judge of Cawnpore is of a very exceptional character. In order to understand the position which the parties now occupy it would be necessary to state the exact nature of the case and the action which has been taken upon it. Abdullah, the petitioner before us, was plaintiff in a suit for dissolution of partnership. He framed his plaint upon the lines laid down in form No. 113 of schedule IV of the Code of Civil Procedure. He prayed the Court to decree a dissolution of the partnership, and that the accounts of the partnership be taken by the Court, the assets thereof realized, and each partner ordered to pay into Court any balance due from him upon the partnership account;

* Application No. 1 of 1895 under s. 622 of Civil Procedure Code.

(1) I. L. R., 9 All., 104.

that the debts and liabilities of the partnership be paid and discharged, costs of the suit be paid out of the assets, and any balance remaining of the assets after payment of the liabilities and of the costs be divided. In fact, as stated above, he prayed the Court to grant him all the reliefs to which he was entitled in a suit for dissolution of partnership. On the 25th of September, 1889, the Subordinate Judge of Cawnpore passed an order to the effect that the partnership should be considered dissolved from that day and that Manohar Das and Sheo Prasad be appointed commissioners to examine the accounts and find out the balance of each sharer. After this had been accomplished the case was to be brought up on the 3rd of December, 1889. An appeal was filed from this order to the Court of the District Judge of Cawnpore, with the result that the order dissolving the partnership was confirmed and a receiver was appointed. It is worthy of notice that this order appointing a receiver was one to which both the parties assented at the time it was passed. Apparently at first the District Judge had some intention of preparing in his Court a decree which should determine the several matters for which relief had been asked in the plaint and which had been left still unadjusted. Upon the 6th of May, 1890, the District Judge directed that the decree should be prepared in the Court of the Subordinate Judge after the commissioners appointed by the Subordinate Judge had adjusted the accounts. The case went back to the Court of the Subordinate Judge for adjustment of the accounts with a receiver appointed for realization of the assets found to be due upon those accounts. There was further a distinct order directing the Subordinate Judge to prepare a decree according to forms Nos. 132 and 133 to be found in schedule IV of the Code of Civil Procedure. We may observe in passing that this order was the proper order to have been passed in the case, and if the Subordinate Judge had only done his duty in carrying out the provisions of that order upon the lines therein laid down, the case would not have become so complicated as it has become. The record appears to have reached the Subordinate Judge on the 7th of May, 1890, and, so far as we can ascertain, the terms of the order appear to have been lost sight of altogether. What did happen thereafter was that the commis-

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sioners examined the accounts, objections were taken to their report, these objections were considered by the Subordinate Judge, and then an order was passed which ran as follows :—

"It is ordered and decreed that out of the assets of the joint firm the parties to this suit shall recover (*hasb zabita*) in due course, Rs. 30,107-7-3, the outstanding debt, and should divide the whole of the assets amounting to Rs. 37,974 as follows." The mode of division is then made out, and a further order is passed that until the plaintiff paid a certain sum due as Court-fees the decree should not be executed.

It is obvious that in passing this order the Subordinate Judge had never taken into consideration either the reliefs which had been asked for by the plaintiff or the standard forms provided by law according to which decrees in dissolution of partnership cases should be framed. Form No. 132 sets out a standard form in which an order granting dissolution of partnership and arranging all the necessaries preliminary to a decree should run. Form No. 133 is the standard form in which a final decree in the same class of cases should run, with such variation as the circumstances of each case require. The Subordinate Judge had issued an order dissolving the partnership. He had under the further order of the District Judge a receiver appointed for getting in the outstandings of the estate. He had arranged for the taking of accounts. So far all has been done in due order; but he had not gone on to collect through the receiver the outstandings due. He had therefore no funds in Court out of which to arrange for the payment of debts due by the partnership, for payment of the costs, and for awarding to each partner his share, if any, of the assets. Had the Subordinate Judge been at the pains of studying the decree sent to him by the District Judge and the form provided by law, he could not have failed to see that there still remained for him on the 22nd of April, 1891, much to do before he could attempt to pass a final decree in the case. These duties which he left undone he attempted to relegate to the parties; for it is difficult to understand in any other light the terms of the order whereby he directed the parties to recover *hasb zabita*" the outstanding debts. There is no procedure

appointed by the Code such as the Subordinate Judge appears to have contemplated, and the result of the so-called decree passed by him on the 22nd of April, 1891, was that he put into the hands of the parties an order which has led to much litigation, and an order which Abdullah, when he tried to execute it, found to be an order pronounced by this Court to be an inoperative decree. After a vain attempt to execute this inoperative decree Abdullah went back to the Court of the Subordinate Judge of Cawnpore and asked that Court to grant him, either by way of amendment or review or in some shape, a decree which he could put into execution. The Subordinate Judge held that a final decree had been passed in the case; that he could not do anything further, and rejected the application. It is this order of rejection, dated the 14th of May, 1894, with which we are asked to interfere either under section 622 or under the powers of supervision given us by Statute.

The authorities upon which counsel for the petitioner relies are *Muhammad Suleman Khan* v. *Fatima* (1), *Gobind Coomar Chowdhry* v. *Kisto Coomar Chowdhry* (2), *In the matter of Omar Chand Mahta* v. *The Nawab Nazim of Bengal* (3), and *Munohur Paul* v. *J. P. Wise* (4).

Upon the authority of these precedents it was contended that this Court could call for the record and pass orders in the case, inasmuch as the Subordinate Judge failed to exercise the jurisdiction vested in him. If, however, it appeared to the Court that s. 622 only provided for cases in which no appeal lay to this Court, s. 15 of the Statute 24 and 25 Vic., Cap. 104 contained no such limitations and conferred a general power of superintendence upon the Court. The whole strength of the arguments upon the opposite side lay in the contention that a decree had been passed in the suit, a decree which had been treated as a decree by the petitioner, who had attempted to execute it, and that the remedy open to the petitioner was that of appeal.

It was contended that both s. 622 of the Code of Civil Procedure and the limit placed upon the use of the word "superintendence"

(1) I. L. R., 9 All., 104.
(2) 7 W. R., 520.
(3) 11 W. R., 229.
(4) 15 W. R., 246.

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in s. 15 of the Statute 24 and 25 Vic., Cap 104 by Mr. Justice Straight in *Muhammad Suleman Khan* v. *Fatima* (1) preclude this Court from interfering with the order of the 14th of May, 1894.

One matter is obvious, and that is that the subordinate Court, *i.e.*, the Court of the Subordinate Judge, has in the suit between the parties signally failed to do its duty. There has not been any patent neglect on the part of the petitioner to enforce his rights. Ever since the ill-advised order of the 22nd of April, 1891, was passed, the petitioner has done his best to enforce his rights with the aid of the so-called decree given to him by the Subordinate Judge. As soon as he found that decree to be inoperative he has taken prompt action to try and get the defects remedied. Under these circumstances we are of opinion that we have the power by way of superintendence to direct the Subordinate Judge to do his duty, both in the way of obeying the decree sent to him by the District Court on the 6th of May, 1890, and to complete, as required by law, those acts which the Legislature requires him as a Court to do, and not to relegate them to the parties when he has a suit for dissolution of partnership before him. This is the interpretation placed by this Court upon the words used in s. 15 of the Charter Act in the case of *Muhammad Suleman Khan* v. *Fatima* (1). The learned Chief Justice and the Judges who concurred with him considered "that under s. 15 of the Charter Act it is 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 matters of which it has no cognizance, but the High Court is not competent in the exercise of this authority to interfere with 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." The words used by Mr. Justice Straight do not in any way conflict with what was laid down by the Chief Justice. All that was said by Mr. Justice Straight was to the effect that ordinarily under the guise of superintendence interference should not be made by the Court beyond the extent indicated in section 622 of the Code of Civil Procedure. In fact, that learned Judge

(1) I. L. R., 9 All., 104.

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took a very wide view of the word 'superintendence,' holding it to include powers of a judicial and *quasi*-judicial character. Looking to the extraordinary nature of this case, we have no doubt that it is our duty under the circumstances to set aside the order of the 14th of May, 1894, and to direct the Subordinate Judge to do his duty and to complete the case in accordance with the forms contained in the Code of Civil Procedure. In doing this he must also be guided by the order of the District Judge sent to his predecessor on the 6th of May, 1890. Costs of the application to be costs in the cause.

Application allowed.

APPELLATE CIVIL.

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June 8.

Before Mr. Justice Aikman.

HAR SARUP (DECREE-HOLDER) v. BALGOBIND AND ANOTHER (OBJECTORS).*

Execution of decree—Limitation—Act No. XV of 1877 *(Indian Limitation Act) Schedule (ii), Article* 178*—Application for execution of a different nature from preceding application.*

A decree-holder in execution of his decree applied, on the 11th January 1888, for arrest of the judgment-debtor. On the 25th February 1888, in consequence of the record of the case being required in the High Court, the Court executing the decree struck off that application *suo motu*. On the 23rd February 1892 the decree-holder again applied for execution of his decree, but this time by attachment and sale of the judgment-debtor's property. *Held* that the second application could not be regarded as a continuance of the former application, and that execution of the decree was time-barred. *Krishnaji Raghunath Kothavle* v. *Anandrav Ballal Kolhalkar* followed. (1)

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

Babu *Jogindro Nath Chaudhri* and Munshi *Madho Prasad* for the appellant.

Messrs. *T. Conlan, Abdul Majid,* and *W. K. Porter* for the respondents.

Second Appeal No 682 of 1894 from an order of H. F. D. Pennington, Esq., Additional Judge of Moradabad, dated the 2nd May 1894, modifying an order of Bábu Gokul Prasad, Offg. Munsif of Moradabad, dated the 29th August 1892.

(1) I. L. R., 7 Bom., 293.