still one year's limitation, under s. 27 of the Rent Act of 1869, would apply where the existence of the tenure is not disputed and the plaintiff's original title, as tenant, had not been questioned, and where there is no question of title raised in the suit or raised before the suit, except whether on the one hand the plaintiff has been dispossessed by force, or, on the other hand, his tenure has come to an end by his having relinquished it. The Court held that the suit was not a suit to try title within the meaning of the rule referred to.

In the present case, however, we find that the defendant from the commencement denied that the plaintiff had any title whatever. Of the 10 bighas claimed, he only admitted that, during one year or for two years, the plaintiff had been a tenant in respect of something under 4 bighas. On the other hand, the plaintiff set up a gorabundi tenure, and prayed the Court to decide that question of title in his favor. We think, therefore, that this case differs from the case of *Srinath Bhattacharji* v. *Ram Ratan De* (1), and that there being a *bonâ fide* question of title, the suit was maintainable within 12 years from the date of the cause of action.

The appeal is dismissed with costs.

H. T. H. *Appeal dismissed.*

Before Sir W. Comer Petheram, Knight, Chief Justice.

IN THE MATTER OF THE PETITION OF SHARUP CHAND MALA. 1887 *June* 10.

SHARUP CHAND MALA *v.* PAT DASSEE.*

Review—Error of law—Law, Mistaken view of—Civil Procedure Code (Act XIV of 1882), *s.* 623.

A review of judgment may be granted (if it is necessary for the ends of justice that the judgment should be reviewed), where there is an error of law on the face of the judgment, or where the decision of the Court has proceeded upon a mistaken view of the law. *Rewa Mahton* v. *Ram Kishen Singh* (2) referred to.

In this case, without deciding whether there was or not any error in law, the application for review of judgment was refused on the ground that it did not appear there was any danger of its causing a miscarriage of justice.

* Civil Rule No. 1025 of 1887 on an application for review of judgment in appeal from Appellate Decree No. 1272 of 1886.

(1) I. L. R., 12 Calc., 606. (2) I. L. R., 14 Calc., 18; I. L. R., 13 I. A., 106.

1887

SHARUP CHAND MALA v. PAT DASSEE.

THIS was a rule obtained by one Sharup Chand Mala, calling upon one Pat Dassee, the plaintiff in the case of *Pat Dassee* v. *Sharup Chand Mala* (1) to show cause why the judgment obtained by her in that case should not be reviewed.

The facts of the case will be found fully stated in I. L. R., 14 Calc., 376. The question there decided was, that a judgment-debtor who has paid off the amount of a decree standing against him, but has done so out of Court, not having certified the fact of such payment to the Court under the provisions of s. 258 of the Civil Procedure Code, is at liberty (in a suit brought by him against the decree-holder for the purpose of setting aside a sale of properties fraudulently held in execution subsequently to payment of the decretal money) to prove the payment of the decretal money otherwise than by production of a certificate under s. 258.

The grounds on which the rule *nisi* were obtained were:

(1). That as the auction-purchaser was in no way implicated in the fraud practised by the decree-holder on the judgment-debtor, the sale ought not to have been set aside.

(2). That in accordance with the decision of the Privy Council in the case of *Rewa Mahton* v. *Ram Kishen Singh* (2), the sale should not have been set aside.

(3). That the question regarding s. 258 of the Code of Civil Procedure was never raised in the lower Courts.

(4). That the decision of the High Court was in conflict with the decisions of *Jan Ali* v. *Jan Ali Chowdhry* (3); *Chunder Kant Surmah Talookdar* v. *Bissesur Surmah Chuckerbutty* (4); *Ram Ghulam* v. *Hazaru Kuar* (5).

Mr. *Woodroffe*, Baboo *Rash Behary Ghose* and Baboo *Kasinath Kant Sen* to show cause, supported the judgment, citing *Kristo Ram Roy* v. *Janokee Nath Roy* (6), *Lalit Mohun Roy* v. *Binodai Dabee* (7), remarking that in *Rewa Mahton* v. *Ram Kishen Singh* (2) the remarks made by the Privy Council in the

(1) I. L. R., 14 Calc., 376.
(2) I. L. R., 14 Calc., 18; I. L. R., 13 I. A., 106.
(3) 1 B. L. R., A. C., 56; 10 W. R., 154.
(4) 7 W. R., 312.
(5) I. L. R., 7 All., 547.
(6) I. L. R., 7 Calc., 748.
(7) I. L. R., 14 Calc., 14.

last seven lines of the second paragraph on p. 25 of the report were *obiter*; and as to the grounds for review being bad referring to the cases cited in the Notes to s. 623 of Mr. O'Kinealy's edition of the Code heading "any other sufficient reason."

The *Advocate-General* (Mr. *Paul*) and Mr. *R. E. Twidale* in support of the rule contended that under the Code the decree was never satisfied, for before satisfaction could be entered up under s. 258 the fact of the decree having been paid off must be certified to the Court, and that that not having been done, there was no satisfaction of the decree; that if execution had issued properly, on what ground could the sale be set aside? Clearly only for irregularity or fraud; that neither of these matters were alleged as against the purchaser; that the case of *Rewa Mahton* v. *Ram Kishen Singh* (1) was not at the hearing of the appeal brought to the notice of the Court, that case being directly in conflict with the decision on appeal and directly governing the present case, it being there "held that a purchaser under a sale in execution is not bound to enquire whether the judgment-debtor has a cross-judgment of a higher amount, such as would have rendered the order in execution incorrect. But that if the Court has jurisdiction, such purchaser is no more bound to enquire into the correctness of an order for execution than he is as to the correctness of the judgment upon which execution issues. These are questions to be determined by the Court issuing execution." That Mr. Woodroffe had stated that the latter part of these remarks were *obiter dicta*, but that was not so, a general principle being laid down thereby. As to whether there was good ground in law to ask for the review, an error on a point of law was a good ground—*Koh Poh* v. *Moung Tay* (2), referring also to *Chintamini Pal* v. *Pyari Mohan Mookerjee* (3), *Pentland* v. *Stokes* (4), *Reasut Hossein* v. *Hadjee Abdoollah* (5).

The order of the Court (Mr. Justice CUNNINGHAM being absent from the Court at the time of the granting of the rule and at the hearing) was delivered by

(1) I. L. R., 14 Calc., 18; I. L. R., 13 I. A., 106.
(2) 10 W. R., 143. (4) 2 Ball., and B., 76.
(3) 6 B. L. R., 126. (5) L. R., 3 I. A., 221 (229): I. L. R. 2 Calc. 131.

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SHARUP CHAND MALA v. PAT. DASSEE.

PETHERAM, C.J.—This is an application to admit to review a judgment passed in March last by my brother Cunningham and myself, and the ground for the application is that there is a manifest error in law on the face of the judgment, because it is absolutely in conflict with a judgment of the Privy Council delivered in the month of July of last year, and which appeared in the January number of the Law Reports of this year, and which consequently was in existence and known in this city when the case was argued and judgment given, but was not cited in the argument before us. Now I have not the slightest doubt that if there is an error in law on the face of a judgment, or if it is shown that the decision of the Court has proceeded upon a mistaken view of the law, that is a ground for review of judgment if it be necessary for the ends of justice that the judgment should be reviewed. These are the words used by Mr. Justice Norman in a case which was cited before us; and if for any reason it could be shown to me that any judgment of mine was wrong in fact on a point of law, and that there was any danger whatever that the ends of justice would be defeated, or that justice would not be done by reason of that error, I should be the first man to set it right; but I do not think that in this particular case there is any necessity whatever for reviewing our judgment. In the first place, if there is an error, it is an error of law which was just as great an error at the time the judgment was passed, and as apparent then as it is now, because the law, if the case now relied upon had then been brought before us, was just as clear at the time as it is now. I am not prepared to say whether, if it had been cited before us, this decision of the Privy Council might or might not have changed my view of this particular case; and I am not prepared to say that the decision of this case was wrong in law, because the facts of the case before the Privy Council were not the same as the facts of the case before us. The case before the Privy Council was one in which the decree was not satisfied, but this is a totally different case. If, however, as I said before, I thought that there was any danger from any possible error of law that the ends of justice would be defeated, I would have no hesitation in granting the review; but I do not think in this

case that, whether the decision on the law is right or wrong, there is any danger at all that justice will not be done. The only question is, which of two innocent persons is, not to bear a loss, but to be put to his remedy against a third person for the recovery of a certain sum of money; there is no question of that money having to be recovered from a person unable to repay it; there is no question that the judgment-debtor has paid the money and satisfied the decree; and no question that there is a remedy against the fraudulent decree-holder to recover that money by the person who purchased the property at the auction sale held at the instance of the decree-holder on a decree which had already been satisfied.

Under these circumstances I do not think it necessary in this case, whether there is or there is not any error in law, that this judgment should be reviewed, and I therefore refuse to admit the review.

The opposite party will be entitled to recover the costs of this hearing from the petitioner.

T. A. P. *Rule discharged.*

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Ghose.

IN THE MATTER OF DEEFHOLTS (CLAIMANT).
DEEFHOLTS *v.* PETERS (DECREE-HOLDER) AND OTHERS (OPPOSITE PARTIES).*

1887
June 29.

Civil Procedure Code (Act XIV of 1882), *s.* 278—*Claim to property directed to be sold under a mortgage decree—Attachment.*

Proceedings by way of claim under s. 278 of the Civil Procedure Code are applicable only to cases of money decrees where property has been attached, and not to claims preferred to properties directed to be sold under mortgage decrees.

THIS was a claim preferred by one Mrs. Deefholts under s. 278 of the Civil Procedure Code to certain properties which had been mortgaged in 1884 by her uncle to Mrs. Sophia Peters who had obtained a decree on such mortgage under ss. 86-88

* Civil Rule No. 505 of 1887, against the order of Baboo Promotho Nath Bannerjee, Subordinate Judge of Mymensingh, dated the 23rd of March 1887.