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1892 (55 Vic. Cap. IX) and Bombay Act III of 1865, according to which contracts collateral to or in respect of wagering transactions cannot support a suit. It is contended, however, that there is nothing in the present case to show that the defendant ever authorized the plaintiff to enter into transactions in differences only or other than genuine transactions of sale and purchase, that the plaintiff in entering into gambling transactions exceeded his authority, and that consequently the defendant is not liable either to make good the losses or to pay the commission. We construe the judgment of the lower appellate Court, however, as finding that the defendant was aware of and authorized the plaintiff to enter into the transactions in question. That being so, the order of the lower appellate Court remanding the case under section 562 is correct, and this appeal must be dismissed with costs.

Appeal dismissed.

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January 30.

Before Sir Arthur Strachey, Knight, Chief Justice, and Mr. Justice Banerji.

HABIB BAKHSH AND OTHERS (DEFENDANTS) v. BALDEO PRASAD AND OTHERS (PLAINTIFFS).*

Civil Procedure Code, sections 562, 564, 566—*Appeal—Remand—Power of appellate Court to remand for trial on the merits otherwise than under the provisions of section* 562.

Section 564 of the Code of Civil Procedure must be read subject to the other provisions of the Code, for example, those contained in section 27, section 32, or section 53. An appellate Court has power to make an order under any of those sections, and in order to give effect to the provisions of the section which is applicable, it is necessary that it should in certain cases send back the case to the Court of first instance: Under such circumstances section 564 of the Code will not preclude an appellate Court from remitting a case to the Court of first instance. *Rameshur Singh* v. *Sheodin Singh* (1), *Mahgu Kuar* v. *Faujdar Kuar* (2), *Mullu Khan* v. *Than Singh* (3), *Durga Dihal Das* v. *Anoraji* (4), *Salima Bibi* v. *Sheikh Muhammad* (5), *Mihin Lal* v. *Imtiaz Ali* (6), *Rajit Ram* v. *Katesar Nath* (7), *Ganesh Bhikaji Juvekar* v. *Bhijaki Krishna Juvekar* (8) and *Kelu Mulacheri Nayar* v. *Chendu* (9) referred to.

* Second Appeal No. 780 of 1898, from a decree of Babu Sanwal Singh, Judge of the Court of Small Causes, Agra, with powers of a Subordinate Judge, dated the 24th June 1898, reversing a decree of Khwaja Abdul Ali, Munsif of Agra, dated the 29th March 1898.

(1) (1889) I. L. R., 12 All., 510.
(2) Weekly Notes, 1891, p. 105.
(3) Weekly Notes, 1891, p. 187.
(4) (1894) I. L. R., 17 All., 29.
(5) (1895) I. L. R., 18 All., 131.
(6) (1896) I. L. R., 18 All., 332.
(7) (1896) I. L. R., 18 All., 396.
(8) (1886) I. L. R., 10 Bom., 398.
(9) (1895) I. L. R., 19 Mad., 157.

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

Maulvi *Ghulam Mujtaba* and Maulvi *Muhammad Ishaq*, for the appellants.

Mr *D. N. Banerji* and Pandit *Sundar Lal*, for the respondents.

STRACHEY, C. J.—Apart from an unimportant matter relating to the wording of the decree, the appeal of the defendants is based upon a purely technical ground in reference to an interlocutory order, by which the lower appellate Court on appeal directed the amendment of the plaint, and that the case should be sent back to the Court of first instance for trial on the merits. The suit was for possession of certain land claimed as belonging to a temple. It was originally brought in the names of the managers of the temple. Upon an objection raised by the defendants, the Court of first instance ordered that the plaint should be amended by substituting as plaintiff the name of the idol of the temple. With regard to the merits of the case, various issues of fact were framed, and the first Court, after taking evidence and trying all the issues, dismissed the suit. The plaintiff appealed, and the lower appellate Court held, on the authority of *Thakur Raghunathji Maharaj* v. *Shah Lal Chand* (1) that the suit could not be brought in the name of the idol. The Court followed the course which was taken by the High Court in that case, directed the amendment of the plaint, and remanded the case for re-trial. So far as the remand is concerned, the words used by the Court in its order were as follows:—"and remand the case under section 562 of the Code of Civil Procedure (by analogy) to the lower Court to be restored to the file, and proceeded with and decided on the merits in accordance with law." The amendment of the plaint which the Court directed was by substituting as plaintiffs the names of the managers of the temple in place of the idol. No appeal was brought against the order of remand. The plaint was amended, the case was retried by the Court of first instance, fresh evidence was given, a fresh judgment was recorded, and ultimately the Court again dismissed the suit on the merits. The plaintiff appealed, and their appeal was successful. The lower appellate

(1) (1897) I. L. R., 19 All., 330.

Court decreed the claim. Against that decree the defendants now appeal, and the appeal is practically confined to the order of remand which, it is contended, was *ultra vires* and illegal. So far as regards that part of the order which directed the substitution as plaintiffs of the managers of the temple for the idol of the temple, I think there can be no doubt that the order was perfectly right. It was justified, I think, by the ruling which the lower appellate Court referred to and by section 27 of the Code of Civil Procedure, which empowers a Court to make a necessary substitution of plaintiffs under certain conditions at any stage of the suit, including the stage of appeal. The objection, however, mainly concerns, not the amendment of the plaint, but the following words remanding the case to the first Court for re-trial. It would be very unfortunate if we were compelled, on such a ground as this, to set aside the second decision of the suit on the merits; but still, if that is the necessary effect of the provisions of the Code; it must be done. The appellants rely on the provisions of section 564 of the Code, which provides that "an appellate Court shall not remand a case for a second decision except as provided in section 562;" and there can be no doubt that the order of remand in question was not of the nature contemplated by section 562, because the first Court had disposed of the suit, not upon a preliminary point, but upon the merits after trial of all the issues. The appellants further rely on the judgments of the Full Bench of this Court in *Rameshar Singh* v. *Sheodin Singh* (1). It was there held that where the first Court had decided the suit, not upon a preliminary point, but upon the merits, and on all the evidence and on all the issues, the lower appellate Court had no jurisdiction to remand the case under section 562; and that having regard to section 564, both the remand order and all the proceedings subsequent thereto were *ultra vires* and illegal. The Court further rejected the contention that such a defect in the order of remand would be covered by the provisions of section 578. It is to be observed that in that case the order of remand expressly purported to be made under section 562; whereas here the lower appellate Court evidently considered that section applicable only

(1) (1889) I. L. R., 12 All., 510.

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by way of analogy, and evidently therefore conceived itself to be justified by some other provisions of the law. Further, in that case no provision of the Code other than section 562 was suggested as possibly justifying the remand. Again, the Full Bench of the Court in dealing with that case, themselves remanded it to the lower appellate Court, with a direction to restore the appeal to the file, and to dispose of it according to law; and as the lower appellate Court had not disposed of the case upon any preliminary point, the Full Bench clearly considered that section 564 did not stand in the way of this Court in second appeal making a remand for a second decision, otherwise than as provided in section 562. It appears to have been considered in various cases that by reason of the words in section 587 making the procedure of chapter XLI applicable to second appeals only "as far as may be," and the fact that section 565 cannot in strictness be applied to a Court of second appeal, limited by the restrictions of sections 584 and 585, section 564 does not preclude a Court of second appeal from remanding a case for re-trial, even where the first Court has not disposed of the suit upon a preliminary point—see the cases reported in I. L. R., 10 Bom., 398; I. L. R., 19 Mad., 157; W. N., 1891, p. 187; W. N., 1891, p. 105, and I. L. R., 17 All., 29, where it was suggested that although there was no section in the Code strictly authorizing a remand, the Court was warranted *ex debito justitiæ* under the circumstances in setting aside all the proceedings of the Court below, and directing the Court of first instance to retry the case. That is the distinction which appears to have been drawn between the powers of a Court of first appeal and those of a Court of second appeal with reference to the prohibition contained in section 564. Even as regards Courts of first appeal, however, there are cases in which it has been held that, notwithstanding section 564, a Court of first appeal may sometimes remand a case for re-trial where the Court of first instance has not acted in the manner described in section 562. One of these is the case of *Salima Bibi* v. *Sheikh Muhammad* (1). In that case, which was a first appeal, there had been a misjoinder of causes of action, and the order of this Court was as follows:—"We set aside the decree below, and direct the Court below to perform the duty which that

(1) (1895) I. L. R., 18 All., 131.

Court ought to have performed under section 53, of Act No. XIV of 1882, that is to say, we direct the Court below to return the plaint to the plaintiffs for amendment, so that the plaintiffs may elect which of them are, or is, to continue as plaintiffs or plaintiff in the suit." So that it was there apparently held that, in order to enable the provisions of section 53 to be carried out, the Court of first appeal had power to remand the case, and direct the Court of first instance to do its duty under that section. Another case is *Rajit Ram* v. *Katesar Nath* (2). That had reference to a defective verification of the plaint, and the Court considered what was to be done if the defect were not discovered until the suit came before an appellate Court. At page 399 of the report the following observations occur:—"Further, if the amendment is one going to the maintenance of the suit, and the defect in the plaint is not discovered until the suit gets into a superior Court on appeal, the appellate Court, in our opinion, can either order the amendment to be made in that Court, or, for example, in a case where there has been not only misjoinder of parties, but misjoinder of causes of action, the appellate Court may order the Court of first instance to do what it ought to have done at the proper stage of the suit, when the suit was before it, and return the plaint to the parties, so that they may make their election as to which of them is to continue the suit, and may make the necessary amendments." There again the view taken by the Court appears to have been that the appellate Court has the power in question by virtue of the requirements of section 53 of the Code. The difficulty is that, apart from sections 562 and 566, no express power of remand is given by the Code to an appellate Court. In the present case the sections of Chapter XLI do not appear to have been applicable. Section 562 was not applicable for the reasons which have already been sufficiently given. Then could the appellate Court have acted under section 566? I do not think that that would have sufficiently met the requirements of the case. Under that section a remand is not made for a further trial and decision by the first Court on the whole case, but only for findings on specified issues to enable the appellate Court itself to pass a proper decision. But what the Legislature contemplated

(2) (1896) I. L. R., 18 All., 396.

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was, that litigants should have the decisions of two Courts upon the whole suit. Upon this point reference may be made to the observations contained in the judgment in *Mihin Lal* v. *Imtiaz Ali* (1). Except that that case was a second appeal, it has a very close bearing upon the case now before us. The head-note, which correctly summarises the judgment, is as follows:— "When a Court hearing an appeal is of opinion that a person not a party to the suit, and not entitled to be brought on the record in a representative capacity, should be a party to the record, its proper course is to remand the case to the Court of first instance, and to direct that Court to bring on a particular person as a defendant, or as a plaintiff, if he consents, give him time to file his statement and opportunity to produce his evidence, and try the issues raised between him and the opposite side." These observations were no doubt *obiter dicta*, but they are noteworthy as an instance in which an appellate Court was treated as having a power of remand otherwise than under section 562, in order to give effect to the provisions of another section of the code, namely, section 32, which was applicable at the stage of appeal, but to which effect could not be given without directing the Court of first instance to take evidence, and in fact retry the suit. Proceeding with the sections of Chapter XLI, section 568 no doubt allows an appellate Court in certain cases to take additional evidence But I doubt whether that section would apply to a case where a new plaintiff was substituted under section 27, or a new party added under section 32 of the Code at the stage of appeal. In such a case the new party so brought on the record could not be affected by the evidence already taken in his absence; he must be allowed to raise further issues, and to support his claim or defence by evidence of his own. I think that section 568 merely contemplates a case where there is on the record evidence to be considered between the parties, but where further or additional evidence is required to be taken into consideration along with that already given. It was indeed admitted by the learned vakil for the appellants that the sections in Chapter XLI to which I have referred would not apply to such a case as the lower appellate Court here had before it when making its order

(1) (1896) I. L. R., 18 All., 332.

of remand. Then what is to be done when a Court of appeal finds it necessary to act under section 27, or section 32, or under section 53 of the Code? Where new issues have to be framed, and evidence taken upon those issues, it must be done either in appellate Court or in the Court of first instance. If section 568 is not applicable, I do not see what other power an appellate Court has to do what is necessary in such a case; or in other words, to assume the functions of a Court of original jurisdiction. It follows that what is to be done for the purpose of giving effect to the provisions of the law which I have referred to must be done by the Court of first instance, and if so, it follows that the appellate Court must have power to direct the Court of first instance to do it. That power is not contained in section 562, but it is implied by the requirements of the section to which the appellate Court is giving effect, and the only question is, how is it to be reconciled with the terms of section 564? The most general rule of the construction of statutes is, that every part of the statute must be read with every other part, and that effect must not be given to one part in such a manner as to defeat the rest. All parts of the statute are of equal authority, and sections 27, 32, and 53, for instance, must be given effect to, at the stage of appeal or otherwise, as much as section 564. It is just as if section 564 were preceded by the words "subject to the requirements of any other provision of this Code." Where a remand was not necessitated by the provisions of section 27, section 32, section 53 or any other provision of the Code, then no doubt, section 564 would have full effect and would exclude a remand except as provided in section 562. I prefer this way of looking at the matter to saying that, apart from the specific provisions of the Code, which, after all, purports to contain the whole law of Civil Procedure, an appellate Court has an inherent power of remand *ex debito justitiæ*. The result is that I think the order of remand was justified in this case, and that the appeal therefore fails.

The only other point has reference, as I have said, to the wording of the decree, which, I think it is now common ground, is ambiguous in its description of the plaintiff's claim, which it allows. The decree will be varied in the following way, which

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removes the ambiguity in question. From the words "the result" down to "erected by the defendants" the following will be substituted. "The result of this will be that the plaintiff's claim for possession of so much of the land forming part of No. $\frac{702}{1490}$ appertaining to the temple called Kuanwala, situate in the village Mau as is covered by the *chabutra* in dispute marked yellow on the plan annexed to the plaint for removal of the thatch erected by the defendants on the said *chabutra*." With this variation the rest of the decree will stand. The appeal is dismissed. As the appeal has substantially failed, the respondents will get their costs.

BANERJI, J.—The main question which arises in this appeal is by no means free from difficulty. The difficulty arises by reason of the provisions of section 564 of the Code; but, as has been pointed out by the learned Chief Justice, that section must be read subject to the other provisions of the Code, for example, those contained in section 27, section 32 or section 53. An appellate Court has the power to make an order under any of those sections, and in order to give effect to the provisions of the section which is applicable, it is necessary that it should, in certain cases, for the ends of justice, send back the case to the Court of first instance. Section 564 does not seem to preclude an appellate Court from remitting a case to a Court of first instance under the circumstances indicated above. This is the view which has been taken by this Court in the several cases to which the learned Chief Justice has referred, and I see no reason why we should depart from that view. The rulings in those cases justify the order of remand impugned in this appeal. I agree in making the decree proposed.

Appeal dismissed.