1903

HABIB-UN-NISSA v. MUNAWAR-UN-NISSA.

as a matter of right from an order of remand, even though the subject matter exceeded Rs. 10,000 and the Judges deciding the case stated their reason for the decision to be that the order in question could not be regarded otherwise than as an interlocutory order. In the case of *Forbes* v. *Ameeroonissa Begum* (1) their Lordships treated an order of remand as an interlocutory order, and held that no appeal lay on the ground that it did not purport to dispose of the cause. Now in the present case, the decree of the Court of first instance did dispose of the case, wholly dismissing the plaintiffs' suit. The appellate order of this Court, however, in reversing the decree of the Court of first instance, on the question of limitation, left the parties open to contest their rights and claims on every other point. We are of opinion that this is purely an interlocutory order from which an appeal does not lie to His Majesty in Council.

We accordingly dismiss the application with costs.

Application dismissed.

1903
May 6.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.

JAMAL-UDDIN (PLAINTIFF) v. MUJTABA HUSAIN AND OTHERS (DEFENDANTS).*

Civil Procedure Code, section 539—*Suit for a declaration that certain property is endowed property.*

Section 539 of the Code of Civil Procedure presupposes the existence of a trust for the administration of which it is necessary to make provision. That section cannot apply to a suit in which the object of the plaintiff is to obtain a declaration that certain property is endowed property, the fact of endowment being denied on the other side.

THE suit out of which this appeal arose was brought by the plaintiff to have it declared that certain property specified in the list appended to the plaint, was endowed for the purpose of a mosque and *imambara* and other charitable purposes. It was alleged in the plaint that the property in question was so dedicated by Musammat Bandi Begam and Syed Ghulam Ali under an agreement, dated the 6th of April 1887, and an arbitration award, dated the 4th of May 1887. It was also alleged that

---

*First Appeal No. 160 of 1901, from a decree of Babu Mata Prasad, Subordinate Judge of Moradabad, dated the 18th of April 1901.

(1) (1865) 10 Moo., I. A., 340.

1903

JAMAL-UDDIN v. MUJTABA HUSAIN.

the agreement under which the property was decided provided an annuity of Rs. 300, for the maintenance of the plaintiff and his family. It was further alleged that the defendants, some of whom claim to be the heirs of Syed Ghulam Ali, whilst two of them, Syed Hasmat Husain and Syed Ashiq Husain, are said to be *mutawallis* of the endowed property, colluded together and set up a case that the property belonged to Syed Ghulam Ali and never became endowed. It was also stated that the defendants had formerly instituted two suits in respect of the property, in which they denied that it was ever endowed property. The plaintiff asked for a declaration that the property was endowed property and could not be inherited as the property of Syed Ghulam Ali. The defendant Musammat Begam filed a written statement in which she pleaded that section 539 of the Code of Civil Procedure operated as a bar to the suit, and also alleged that the endowment set up by the plaintiff was not made by Syed Ghulam Ali, or Musammat Bandi Begam. The same defence was set up in their written statements by the defendants Mujtaba Husain, Zamin Husain, and Musammat Husaini Begam.

The Court of first instance (Subordinate Judge of Moradabad) without hearing the evidence which the plaintiff was prepared to adduce, decided in favour of defendants' contention that section 539 was a bar to the suit. Notwithstanding this fact the Subordinate Judge nevertheless proceeded to deal with the case upon such evidence as he had before him, and ultimately dismissed the suit. From this decree the plaintiff appeal to the High Court.

Messrs. *Karamat Husain* and *Abdul Raoof*, for the appellant.

Pandit *Moti Lal Nehru* and Munshi *Gokul Prasad*, for the respondents.

STANLEY, C.J., and BURKITT, J.—The decision of the learned Subordinate Judge cannot be supported. The suit which has given rise to this appeal was brought by the plaintiff to have it declared that certain property, which is specified in the list appended to the plaint, was endowed for the purpose of a mosque and *imambara*; and other charitable purposes, and

for no other purpose. It is alleged in the plaint that under an agreement of the 6th of April 1887, and an arbitration award, dated the 4th of May 1887, the property in question was dedicated by Musammat Bandi Begam and Syed Ghulam Ali for the purposes which we have mentioned. It is also alleged that the agreement under which the property was dedicated provided an annuity of Rs. 300 for the maintenance of the plaintiff and his family. In the claim it is stated that the defendants, some of whom claim to be the heirs of Syed Ghulam Ali, whilst two of them, Syed Hashmat Husain and Syed Ashiq Husain, are alleged to be *mutawallis* of the endowed property, colluded together and have set up the case that the property belonged to Syed Ghulam Ali and never became endowed. It is also stated that the defendants instituted two suits in respect of the property, in which they denied that it was ever endowed property. The present suit is brought for the purposes of having it declared that the property was endowed, and that the case set up by the defendants that they are the true owners of it is a false case. In her written statement the defendant Musammat Begam set up the defence that section 539 of the Code of Civil Procedure operated as a bar to the suit. She also alleged that the endowment which was alleged by the plaintiff was not made by Syed Ghulam Ali or Musammat Bandi Begam. The only other defendants who filed written statements are Syed Mujtaba Husain, Zamin Husain and Musammat Husaini Begam, and they in their written statement also set up the bar of section 539, and alleged that the property was not endowed property. The learned Subordinate Judge, without hearing the evidence which the plaintiff was prepared to adduce, decided in favour of the defendants' contention that section 539 was a bar to the suit, no consent of the proper officer to its institution having been obtained. Notwithstanding the fact that he held that the suit was barred he yet proceeded to dispose of the case as if it was open to him to adjudicate upon it. This he clearly ought not to have done. Having found that he had no jurisdiction, it was his duty to return the plaint to the plaintiff to be presented to a Court having jurisdiction to try the suit. He, however, upon the imperfect evidence which was before him,

1903

JAMAL-UDDIN v. MUJTABA HUSAIN.

took upon him to decide certain questions of fact and law, and upon his determination of these issues, as also upon the legal point to which we have referred, dismissed the claim.

We are wholly unable to agree with the view of the learned Judge upon the preliminary question which was raised. Section 539 appears to us to have no application to the facts of this case. That section presupposes the existence of a trust. The language of the section shows this beyond any doubt. It has provided for a case in which there is an alleged breach of any express or constructive trust created for any public charitable or religious purposes, or whenever the direction of the Court is deemed necessary for the administration of any such trust. It enables the Advocate-General, or two or more persons having an interest in the trust, and having obtained the consent in writing of the Advocate-General, to institute a suit in the High Court, or the District Court within the local limits of whose civil jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree appointing new trustees, vesting any property in the trustees under the trust, declaring the proportion in which its objects are entitled, and so forth; a suit, in fact, for the administration, either partially or completely of the trust. If the plaintiff in this case, or the plaintiff associated with one or more persons interested in the trust, had applied to the Legal Remembrancer, who in these Provinces would represent the Advocate-General, for liberty to institute a suit, it would have been the duty of the person so applying to have satisfied the Legal Remembrancer that there was an express or constructive trust existing, and if he failed to satisfy the Legal Remembrancer of this fact, then we take it that it would have been his duty to refuse to entertain the application. Here the suit is not brought for any of the purposes enunciated in section 539, nor is it instituted for the granting of any such further or other relief as is mentioned towards the end of that section. It is a suit instituted simply and solely for the purpose of having a declaration of the Court that certain property is waqf. It is in no way a suit for the administration of the waqf property, or for the removal of the trustees of that property, or for any of the other purposes to which we have referred. The words

after paragraph *(e)*, namely, "granting such further or other relief as the nature of the case may require," must be read with what has preceded as referring to further relief to which the party may be entitled, which arises out of the existence of the trust in respect of which the suit has been brought. The words cannot be interpreted as including the relief which is sought in this case, which is a declaration merely that property has been dedicated as waqf. Inasmuch as we take this view of the section, it is unnecessary for us to discuss the several decisions to which we have been referred, some of which appear to be conflicting. They are not applicable, in our opinion, to the facts of the present case. The appeal, therefore, must be allowed, the decree of the Subordinate Judge set aside, and the suit remanded to the Subordinate Judge under the provisions of section 562, with a direction that it be replaced on the file of pending suits, and decided upon the merits. The costs of this appeal and heretofore incurred will abide the event.

Appeal decreed and cause remanded.

Before Mr. Justice Blair and Mr. Justice Banerji.

1903
May 13.

MAHARAJA OF REWAH (PLAINTIFF) *v.* SWAMI SARAN AND ANOTHER (DEFENDANT).*

Civil Procedure Code, section 432—*Suit by Ruling Chief—Applicability of section* 432 *to suits in Revenue Courts—Plaint—Signature of plaint by an unauthorized agent who subsequently becomes empowered to sign.*

Held that section 432 of the Code of Civil Procedure applies to suits filed in a Court of Revenue under the provisions of Act No. XII of 1881.

Held also that where the plaint in a suit filed in a Court of Revenue on behalf of a Ruling Chief was signed by a person who at the time of signing had not been specially appointed by Government for such purpose under section 432 of the Code of Civil Procedure, but was so appointed before the period of limitation in respect of such suit had expired, the plaint was a valid plaint for all purposes. *Basdeo* v. *John Smidt* (1) referred to. *Marghub Ahmad* v. *Nihal Ahmad* (2) distinguished.

---

* Second Appeal No. 436 of 1901, from a decree of Nawab Muhammad Ishaq Khan Sahib, District Judge of Mirzapur, dated the 12th of February 1901, reversing a decree of Babu Radha Charan, Assistant Collector, 1st Class, of Mirzapur, dated the 29th of September 1903.

(1) (1899) I. L. R., 22 All., 55. (2) Weekly Notes, 1899, p. 55.