

1904

SHEODAR-
SHAN DAS
v.
AHSAN ALI.

preliminary point, we remand the record under section 562 of the Code of Civil Procedure to that Court with directions to readmit the appeal in its file of pending appeals and decide the remaining issues. Costs will follow the event.

Appeal decreed and cause remanded.

1904
April 26.

REVISIONAL CIVIL.

Before Mr Justice Knox and Mr. Justice Aikman.

RAM LAL (PLAINTIFF) v. RATAN LAL AND OTHERS (DEFENDANTS).^{*}
Civil Procedure Code, sections 622, 629—Review of judgment—Revision—Application for revision of an order rejecting an application for review.

Semble that it was the intention of the Legislature that the Court which originally heard a case should be the Court to decide whether an application to review its former judgment should or should not be granted, and where that Court rejects such an application, its decision should not be open either to appeal or to revision by a higher Court.

THE applicant in this case was appellant in an appeal which had been dismissed by the District Judge of Cawnpore on the 26th of June 1899. On the 27th of June 1902 he applied to the District Judge for review of the judgment in the appeal on the ground of the discovery of new and important evidence. The District Judge, however, came to the conclusion that the alleged new evidence was or might have been known to the plaintiff, if he had exercised due diligence long before, and accordingly rejected the application. Against this order rejecting his application for review the plaintiff applied in revision to the High Court.

Mr. B. E. O'Connor, Dr. Satish Chandra Banerji and Muushi Haribans Sahai, for the applicant.

Pandit Moti Lal Nehru and Pandit Mohan Lal Nehru, for the respondent.

KNOX and AIKMAN, JJ.—This is an application made by one Ram Lal, asking this Court to set aside in revision the order of the Court below and to grant an application for review, which was rejected by that Court. A preliminary objection is raised by the other side, to the effect that an order passed upon

^{*}Civil Revision No. 38 of 1903.

an application for review, when it is for rejecting that application, is not open to revision. The learned counsel who had to meet the objection referred to an unreported case of this Court, *i.e.*, Civil Revision No. 33 of 1900, *Jai Mangal Singh v. Mahadeo Prasad Singh*, decided on the 23rd of March 1900, in which a Division Bench of this Court did interfere in revision with an order rejecting an application for review. The question, however, as to whether such an application can be entertained by this Court does not appear to have been raised or considered in the case just quoted. On looking to the language used in section 629 of the Code of Civil Procedure, we are of opinion that the intention was that the Court which originally heard the case should be the Court to decide whether an application to review its former judgment should or should not be granted, and where that Court decides to reject such an application, its decision should not be open either to appeal or to revision by a higher Court. Even if we were of opinion that section 622 was intended to apply to proceedings in the following chapter, we do not think that the present case falls within any of the three contingencies in which this Court has power to call for the record of a case. The question which the District Judge of Cawnpore had to consider was whether the case ought to be re-opened on the ground of the discovery of new and important evidence, which was not within the knowledge of the applicant when the case was previously heard. The Judge had undoubtedly jurisdiction to decide this question; he decided it, and if, to use the words of the Privy Council in *Rajah Amir Hassan Khan v. Sheo Baksh Singh* (1), he did decide wrongly, he did not exercise his jurisdiction illegally or with material irregularity.

For the above reasons we reject this application with costs.

(1) (1884) L. R., 11, I. A., 237.

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 v.
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