

1907
May, 1.

Before Mr. Justice Griffin.

SHEO RAM TIWARI (DEFENDANT) v. THAKUR PRASAD AND OTHERS
(PLAINTIFFS). *

*Civil Procedure Code, section 578—Irregularity—Disposal of
a suit on a Sunday.*

Hold that the disposing of a civil suit on a Sunday is a mere irregularity which is covered by the provisions of section 578 of the Code of Civil Procedure. *Ram Das Chakarbaty v. The Official Liquidator, Cotton Ginning Company, Limited, Cawnpore*, (1) and *Unnuto Ram Chatterjee v. Protab Chunder Shrivomonee* (2) referred to.

THE facts of this case, so far as necessary for the purposes of this report are as follows. A suit was pending in the Court of a Munsif. The Munsif went on Sunday, the 18th of June 1905, to make a local inspection in the presence of the parties. The parties then and there came to a compromise, which the Munsif embodied in a rubkar; and the same day, namely, Sunday, the Munsif passed a decree in terms of the compromise. The defendant appealed. The lower appellate Court (District Judge of Allahabad) upheld the defendant's contention that the decree was void as having been passed on a *dies non*, but dismissed the appeal on other grounds. The defendant appealed to the High Court renewing his objection that the decree was void in consequence of having been passed on a Sunday.

Babu Satya Chandra Mukerji, for the appellant.

Mr. Abdul Majid, for the respondents.

GRIFFIN, J.—On Sunday, the 18th of June 1905, the Munsif made an inspection of the spot. The parties came to a compromise which was embodied in a rubkar. The Munsif on the same day gave a decree on the compromise. The defendant appealed to the District Judge, who, while upholding the defendant's contention that the decree was void having been passed on a *dies non* dismissed it on other grounds. The defendant appeals to this Court on the ground that the decree, being passed on a Sunday, was null and void. It is admitted that there is no authority of this Court directly bearing upon the question raised in this appeal. I am referred to the ruling in *Ram Das*

* Second Appeal No. 893 of 1905, from a decree of W. D. Burkitt, Esq., District Judge of Allahabad, dated the 30th of August 1905, confirming a decree of Babu Srish Chandra Bose, Munsif of Allahabad, dated the 18th of June 1905.

(1) (1887) I. L. R., 9 All., 366. (2) (1871) 16 W. R., C. R., 230.

Chakrabati v. The Official Liquidator, Cotton Ginning Company, Limited, Cawnpore (1). I am asked to infer from this ruling that a decree passed on a Sunday should be held null and void. No such inference, in my opinion is warranted. For the respondents it is contended that the Court of first instance in disposing of the case on a Sunday committed a mere irregularity, which is covered by the provisions of section 578 of the Code of Civil Procedure. The proceedings were held on the Sunday by consent of parties. I am of opinion that under these circumstances the Munsif in disposing of the case the same day committed merely an irregularity. It is not shown that this irregularity affected the merits of the case or that the Munsif had no jurisdiction.

In a case of *Ununto Ram Chatterjee v. Protab Chunder Shiromonee* (2), the objection taken was against the admission of a plaint on a Sunday. The objection was overruled.

I dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

1907

SHERO RAM
TIWARI
v.
THAKUR
PRASAD.

1907
May, 4.

Before Mr. Justice Banerji.

IN THE MATTER OF THE PETITION OF DAMMA. *

Criminal Procedure Code, section 435—Revision—Executive order—Order of District Magistrate dismissing head-man.

Hold that an order passed by a District Magistrate under the rules framed by Government under section 45 (8) of the Code of Criminal Procedure is an executive order and not subject to the revisional powers of the High Court.

IN this case proceedings were instituted against one Damma under section 110 of the Code of Criminal Procedure. The Magistrate before whom those proceedings were, after holding an inquiry, discharged Damma under section 119 of the Code. At the same time he directed that the record of the case be laid before the District Magistrate with the request that Damma, who was the head-man of his village, might be removed from his office, and that the District Magistrate might, if necessary, direct the police to watch the movements of Damma. The District Magistrate accepted the Deputy Magistrate's recommendation and dismissed Damma from his post as head-man and also directed the

* Criminal Revision No. 143 of 1907.

(1) (1887) I. L. R., 9 All., 366. (2) (1871) 16 W. R., C. R., 230.