MISCELLANEOUS CIVIL.

1909
October 30.

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

IN THE MATTER OF THE PETITION OF NAND KISHORE.*

Civil Procedure Code (1908), *sections* 14, 151; *order* 47, *rule* 1—*Review of judgment—Application for review in second appeal based on alleged discovery of new and important evidence.*

The High Court cannot in a second appeal entertain an application for a review of judgment based on the ground that since the disposal of the appeal, documentary evidence has been discovered which, if sufficiently proved, would have led the Court below to come to a different finding, although, had such evidence been discovered before the disposal of the appeal, the Court might have allowed the appellant to withdraw the appeal with a view to apply to the lower appellate court for a review of judgment on the ground of the discovery of fresh evidence. *Panchanan Mookerjee* v. *Radhanath Mookerjee* (1) and *Raru Kutti* v. *Mamad* (2) referred to and followed.

THIS was an application for review of judgment on the ground of the discovery of fresh evidence. The High Court on the findings of fact in Second Appeal No. 881 of 1905 dismissed the appeal on December 12th, 1907. In 1909 the appellant applied for review of the judgment on the ground that he had discovered new and important evidence, which, if produced before the Court at the trial, might have affected its decision.

Maulvi *Abdul Majid* (with him Babu *M. L. Sandal*), for the opposite party, raised a preliminary objection that the Court having decided questions of fact in the appeal could not entertain an application for review of judgment of a second appeal on the ground that the decision was not correct. He referred to *Bandhan Singh* v. *Chet Narain Singh* (3) and *Raru Kutti* v. *Mamad*, (2).

Mr. *W. K. Porter* for the applicant, submitted that so far as the finding of fact went the Court might not look at the evidence on the record. He only wanted the Court to look at the new evidence, and if that was *primâ facie* sufficient to support the applicant's allegation to remand the case. Counsel referred to *Habib Bakhsh* v. *Baldeo* (4). It was there decided that the Court had power to remand where the justice of the case required it. That power is now given by section 151 of the new Code of Civil

* Application for review of judgement in Second Appeal No. 881 of 1905.

(1) (1870) 4 B. L. R., 213, A. C.
(2) (1895) I. L. R., 18 Mad., 480.
(3) (Weekly Notes, 1895, p. 131.
(4) (1901) I. L. R., 23 All., 167.

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Procedure. If the contention of the other side was sound, then whether, in a case like the present, justice was or was not obtained by the applicant would depend entirely upon accident. It would depend upon whether he was lucky enough to discover the evidence which was necessary to decide the case in his favour before the appeal was disposed of by the High Court or afterwards. The Legislature did not contemplate any period of limitation as applicable to applications for review of judgment, nor presumably, if this could be prevented, that justice should be defeated by chance.

STANLEY, C. J. and BANERJI J.—This is an application for review of a judgment passed in a second appeal by a Bench of this Court, of which one of us was a member, on the 12th of December, 1907. The grounds on which a review of judgment is sought are that since the disposal of the appeal documentary evidence has been discovered which, if sufficiently proved, would have satisfied the Court below that a receipt for money relied on by it was a spurious receipt. It is needless to say that in second appeal the Court is bound to accept the findings of fact of the lower appellate Court, and that Court in this instance found that the receipt relied on was genuine. If on the hearing of the appeal this new evidence had been discovered, it might have been open to this Court to allow the appellant to withdraw the appeal with a view to apply to the lower appellate Court for a review of judgment on the ground of the discovery of fresh evidence. But, unfortunately for the appellant, the evidence was not discovered until some time had elapsed after the dismissal of the appeal. It appears to us to be clear that this Court, if the new evidence had been brought before us before judgment was delivered, could not have considered its weight, nor was it open to this Court to remand the case to the lower appellate Court with a view to the consideration of the documents alleged to have been recently discovered. Under the circumstances we think that the application for a review of judgment on the ground of the discovery of new evidence is clearly untenable. We are not disposed to think that any authority for this is necessary. But if such were required, we have it in two cases decided in the Calcutta and

Madras High Courts. In the case of *Panchanan Mookerjee* v. *Radha Nath Mookerjee* (1) it was held by Mr. Justice LOCH and Mr. Justice MITTER on application for review of a judgment passed by the High Court in a special appeal confirming the decision of the lower appellate Court on the ground of discovery of new evidence, that though this might be a ground for moving the lower appellate Court for a review of its judgment, it was not a sufficient ground for asking for a review of a judgment passed in special appeal. In the case of *Raru Kutti* v. *Mamad* (2) COLLINS, C. J., and PARKER, J., decided a similar point. The plaintiff, who was appellant in second appeal, sought a review of judgment on the ground of the discovery of new and important evidence, from which it would, it was said, appear that the properties in dispute in the litigation were not under attachment at the date of the mortgage the subject-matter of the suit. It was held that the application for review could not be entertained for the reason that the ground relied upon could not be successfully relied upon in second appeal. Their Lordships say:—"In this case the second appeal has been heard and decided, and we can no longer permit the appeal to be withdrawn, nor could we in second appeal admit evidence of fact which was not before the lower appellate Court. We think that the application for a review of judgment on the ground of the discovery of new and important evidence necessarily fails.

But a further point, which we may call trivial, has been raised by the learned advocate for the applicant. In the judgment of this Court referring to the receipt, which is now alleged to be a spurious receipt, the Court observes:—"On the 25th of December, 1902, a sum of Rs. 1,520 was paid in advance for rent by the lessee to the lessor on demand made by the lessor in pursuance of the provisions in the lease to which we have referred. This payment, it is found satisfied the rent payable up to the end of 1314 F." An objection is raised to the statement that "this payment satisfied the rent payable up to the end of 1314 F." The Court did not arrive at any finding of fact as to this nor did it intend to do so. But interpreting the judgment of the learned District Judge, the statement

(1) (1870) 4 B. L. R., 213, A. C. (2) (1895) I. L. R., 18 Mad., 480.

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referring to the payment was inserted in the judgment. It in no way affects the judgment, nor could it in any way be regarded as *res judicata* so far as the rent was concerned for which the suit had been brought. Lest, however, there may be any misapprehension, we think it desirable to omit from the judgment altogether the words to which objection is taken. We accordingly direct that the words, "this payment it is found satisfied the rent payable up to the end of 1314F." be struck out. As the applicant has substantially failed, he must pay the costs of the application.

Application for review dismissed.

REVISIONAL CRIMINAL.

1909
November 3.

Before Mr. Justice Sir George Knox and Mr. Justice Karamat Husain.

EMPEROR *v.* GHANSHAM SINGH.*

Criminal Procedure Code, section 195, *clauses* (1) (*c*), *and* (3)—*Sanction to prosecute—Abetment of offences of forgery and personation committed not in the course of judicial proceedings.*

The offence or offences in which section 195, clause (1), sub-clause (*c*), read with clause (3) of the Code of Criminal Procedure requires that sanction should be given by a court with respect of documents produced in Court must be offences committed by parties to the proceeding, whether the offence be one of the substantive offences described in section 463 or punishable under sections 471, 475 or 476 of the Indian Penal Code or only amounts to abetment of any such offences.

THE facts of this case were as follows:—

One Mare Lal was a resident of the district of Muzaffarnagar, and Muhammad Hashim was a Hakim practising in Meerut. Muhammad Hashim and his wife, Musammat Amatunain, owed some money to Mare Lal. In settlement of the debt, Mare Lal and his debtors entered into an agreement that Muhammad Hashim's wife should execute a sale-deed in respect of her property in favour of Mare Lal. In pursuance of that agreement Muhammad Hashim one day came to Mare Lal, accompanied by a woman who was represented by Muhammad Hashim to be his wife, and they all went to the Sub-Registrar's office to get the sale-deed registered. Later on Mare Lal coming to know of the facts filed a complaint against Muhammad

*Criminal Revision No. 386 of 1909, from an order of Ahmad Ali, Additional Sessions Judge of Meerut, dated the 16th of July 1909.