

REVISIONAL CIVIL.

1911
April, 13.

Before Mr. Justice Sir George Knox and Mr. Justice Banerji.

RAM LAL (PETITIONER) v. KALKA PRASAD AND ANOTHER (OPPOSITE PARTIES).

Civil Procedure Code (1908), order XLVII, rule 1—Review of judgement—Decisions after judgement sought to be reviewed—“New and important matter.”

The plaintiff instituted a suit for ejectment. The defendants pleaded that they were tenants of the plaintiff. The Munsif ordered the defendants to get a declaration of their tenancy. The Assistant Collector declared them to be tenants and the Munsif thereupon dismissed the suit. On appeal, however, the Commissioner set aside the order of the Assistant Collector and this decision was upheld by the Board of Revenue. The plaintiff then applied within 90 days of the decision of the Board of Revenue for review of the Munsif's judgement. *Held* that the judgements of the Commissioner and the Board were “new and important matters” within the meaning of order XLVII, rule 1, of the Code of Civil Procedure. *Wajihela Raisangji Shivasangji v. Shauik Mastudin (1) and Wanam Hari v. Hari Vilhal (2)* referred to.

THIS was an application for revision of an order of a Munsif refusing to entertain an application for review of judgement. The facts out of which the application arose appear from the following order of KARAMAT HUSAIN, J., referring the case to a Bench of two Judges :—

“The facts are these :—Ram Lal brought an action against Kalka Prasad and Nathu Singh in ejectment. The defendants pleaded that they were the tenants of plaintiff. The learned Munsif, acting under section 202 of the Agra Tenancy Act, required the defendants to institute within three months a suit in the Revenue Court for the determination of that question. The Assistant Collector, on the 31st of March, 1909, decided that they were the plaintiff's tenants. The learned Munsif, on the 29th of April, 1909, dismissed the plaintiff's suit. On appeal to the Commissioner it was held on the 17th of July, 1909, that they were not the tenants of the plaintiff, and this decision of the Commissioner was upheld by the Board of Revenue on the 7th of March, 1910. The plaintiff then, on the 2nd of June, 1910, applied to the learned Munsif for the review of his order. He came to the conclusion that there was no sufficient ground for filing the petition of review after ninety days and that the application ought to have been made to the Munsif who dismissed the suit on the 29th of April, 1909. The plaintiff has applied to this court in revision, and it is urged on his behalf that the learned Munsif failed to exercise the jurisdiction vested in him, and that there was sufficient cause for not filing an application for review within ninety days. In the course of argument it is said that the reversal of the decision of the Assistant Collector by the Commissioner and the Board

* Civil Revision No. 78 of 1910.

(1) (1888) I. L. R., 13 Bom., 330.

(2) (1906) I. L. R., 31 Bom., 128.

of Revenue was 'new and important matter' within the meaning of order 47, Rule 1 of the Civil Procedure Code of 1908, and in support of his contention the learned vakil relies on *Waghela Raisangji Shivsangji v. Shaik Mastudin* (1), and *Akbar Khan v. Muhammad Ali Khan* (2). The learned vakil for the opposite party says that the setting aside of the decree of the Assistant Collector by the Commissioner is not a ground for revision, and he relies on *Amrita Lal v. Madho Das* (3), and the remarks of their Lordships in 7 Moore's Indian Appeals at p. 304.

"The point is an important one, and it is desirable to have a ruling of a Bench of two Judges on this point. I therefore refer this case to a Bench of two Judges."

The case was laid before KNOX and BANERJI, JJ.

Munshi *Lakshmi Narain* (with him *Munshi Govind Prasad*), for the petitioner.

Babu *Jogindro Nath Chaudhri*, for the opposite party.

KNOX and BANERJI, JJ.—The applicant in the case before us, Ram Lal, was plaintiff in the court below. He instituted a suit in the civil court for the ejectment of the defendants second party, as trespassers. They met the suit by a plea that they were tenants of the plaintiff. The learned Munsif very properly stayed his hand and required the defendants to institute a suit in the Revenue Court for a determination of the question raised by them. The defendants then went to the Assistant Collector and got from him a decision that they were the tenants of the plaintiff. In accordance with this decision the Munsif dismissed the suit on the 29th of April, 1909. At the time when he passed this order, an appeal was pending in the Court of the Commissioner from the order of the Assistant Collector. The Commissioner decided that the defendants were not tenants and this decision was upheld by the Board of Revenue. The Munsif ought to have waited until the final decision of the Revenue Court, and on hearing that the order of the Assistant Collector was under appeal, he should have waited still further. The plaintiff, armed with the decisions in his favour, applied to the successor of the Munsif for review of the order passed on the 29th of April, 1909. We do not understand why the plaintiff waited so long before he went to the Munsif. It is true that he came within

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(1) (1888) I. L. R., 13 Bom., 380. (2) (1909) I. L. R., 31 All., 610
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ninety days of the decision of the Board of Revenue, but in matters of this kind applications for review should be put in as early as possible. The Munsif before whom the application came refused to entertain it, and we are asked to set aside his order on the ground that he failed to exercise the jurisdiction vested in him. The question before us turns upon one point, namely, whether the decisions of the Commissioner and Board of Revenue can properly be held to be new and important matter within the meaning of order XLVII, rule 1. No judgement of this court which is exactly in point has been placed before us. There is, however, a judgement of the Bombay High Court in *Waghela Raisangji Shivsangji v. Shaik Mashudin* (1), which was approved of in the subsequent case of *Waman Hari v Hari Vitthal* (2). We cannot find that the view taken by the Bombay High Court has been disapproved of or dissented from by any of the other High Courts. The case before us is one in which we think that for the ends of justice we ought to allow a review, and acting upon the precedents quoted above, we allow the application, set aside the order of the Munsif, and send back the case to him with directions to re-admit the suit under its original number and to dispose of it according to law. We make no order as to costs.

Application allowed.

APPELLATE CIVIL.

1911
April. 18.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.
HAMID-UL-LAH KHAN AND OTHERS (DEPENDANTS) v. NAJJO (PLAINTIFFS).
Act No. XV of 1877 (Indian Limitation Act), schedule II, article 104—Muham-
madan law—Dower—Wife put into possession of husband's property in his
lifetime and subsequently dispossessed—Suit by her heir for balance of
dower debt—Limitation.

Held that article 104 of schedule II of the Indian Limitation Act, 1877, (article 104, schedule I, Act IX of 1908) does not apply to a suit by one of the heirs of a Muhammadan widow, who, having been put into possession of her husband's property during his life-time in lieu of her dower is dispossessed thereof subsequently to his death.

* Second Appeal No. 844 of 1910 from a decree of E. O. E. Leggatt, District Judge of Saharanpur, dated the 4th of May, 1910, confirming a decree of Maula Baksh, Subordinate Judge of Saharanpur, dated the 11th of June, 1908.

(1) (1888) L. L. R., 13 Bom., 330. (2) (1906) I. L. R., 31 Bom., 128.