1912

HET SINGH v. TIKA RAM.

suit had the effect of debarring the plaintiff from all right to redeem.

We are satisfied that Tika Ram in calculating the interest from November, 1890, made a *bonâ fide* mistake which constituted a good cause for the extension of the time for the payment of the prior mortgage of the 19th of November, 1889. We therefore uphold the decree of the lower appellate court, but not for the reasons set out by that court in its judgement. The result is that we dismiss the appeal with costs.

*Appeal dismissed.*

---

1912.
*March* 9.

*Before Mr. Justice Karamat Husain and Mr. Justice Tudball.*

GUR CHARAN DAS (DEFENDANT) v. HAR SARUP (PLAINTIFF).*

*Act (Local) No. 1 of 1904 (General Clauses Act), section 23—Act (Local) No. 1 of 1900 (United Provinces Municipalities Act), section 187—Municipality—Powers of Government to frame rules—Rules as to Municipal elections—"Previous publication"—"Competent court."*

Certain draft rules relating to municipal elections were published in the local Gazette. These draft rules were then considered by the Government in connection with such criticisms and objections as had been presented, and finally a set of rules was published in the Gazette as having been made under section 187 of the United Provinces Municipalities Act, 1900.

*Held* that such rules were none the less validly passed because in some details they differed from the draft rules previously published.

The rules so made provided that a municipal election might be questioned by means of a petition presented to 'a competent court.'

*Held* that the expression 'competent court' so used meant a Civil Court of competent jurisdiction with reference to the valuation given by the petitioner in his petition.

This was a suit instituted in the court of a Munsif praying for a declaration that a certain municipal election was invalid. The suit was thrown out by the Munsif upon the ground that he had no jurisdiction to entertain it. The plaintiff appealed, and the Additional District Judge of Meerut, coming to the conclusion that the Munsif had jurisdiction to try the suit, remanded it to his court for trial. From that order of remand the defendant appealed to the High Court, his principal plea being the invalidity of the rules framed by the local Government under which the right of questioning a municipal election by means of a petition presented to a "competent court" was granted.

* First Appeal No. 117 of 1911, from an order of C. E. Guiterman, Additional Judge of Meerut, dated the 31st of August, 1911.

1912

GUR CHARAN DAS v. HAR SARUP.

Mr. *C. Dillon* and Munshi *Girdhari Lal Agarwala*, for the appellant.

Munshi *Govind Prasad*, for the respondent.

KARAMAT HUSAIN and TUDBALL, JJ. :—This was a suit instituted in the court of a Munsif for a declaration that a certain municipal election was invalid. The learned Munsif decided that he had no jurisdiction to entertain the suit. There was an appeal to the learned Additional District Judge of Meerut, who came to the conclusion that the Munsif had jurisdiction to try the suit and remanded the case to his court for trial on the merits. An appeal is preferred to this Court from the order of remand, and the contention of the learned counsel for the appellant is that under section 187 of the Municipalities Act, No. 1 of 1900, a previous publication of the rules finally made by the local Government is a condition precedent to the validity of such rules. His contention is that the draft of these rules was published in the local Gazette of these provinces on the 27th of February, 1909, and that in that draft a rule No. 39 ran as follows :—"The validity of an election may be questioned by a petition to the District Magistrate on the ground, etc.," that when that rule was published in the official Gazette of these provinces on July the 30th, 1910, it assumed the following form :—"Rule 42, clause 1. The validity of an election made in accordance with these rules shall not be questioned except by a petition presented to a competent court within fifteen days after the date on which the election was held by a person or persons enrolled," &c., and that as there was no second publication of the amended rule wherein the expression "District Magistrate" was replaced by the expression "competent court," the rules as published on July the 30th, 1910, are not validly published rules. The term "previous publication" has been defined in the General Clauses Act (Local), No. 1 of 1904, section 23. The last clause of that section is in the following terms :—"The publication in the Gazette of a rule or bye-law purporting to have been made in the exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made." This section defines what is meant by "previous publication." In the case before us the draft rules were published in the official local Gazette of 27th February,

1912

GUR CHARAN DAS v. HAR SARUP.

1909, and notice was given to the public that the rules would be taken into consideration by the local Government on or after the 15th of May, 1909, and in pursuance of that notice after considering all criticism the rules as already mentioned were published in the official Gazette of these provinces on the 30th of July, 1910, which gave the power of hearing the petitions questioning the validity of an election to a competent court. The publication, therefore, was a valid publication of the rules, and the rules published in the official Gazette of these provinces on the 30th of July, 1910, no doubt, have the force of law.

The second question is as to which court is a competent court within the meaning of rule 42, published on the 30th of July, 1910. We have no doubt that the expression "competent court" within the meaning of that rule means a Civil Court of competent jurisdiction with reference to the valuation given by the petitioner on his petition.

The question of the validity of the election is purely a civil question and the words "District Magistrate" have been intentionally replaced by the words "competent court."

The result is that we dismiss the appeal with costs.

*Appeal dismissed.*

## REVISIONAL CIVIL.

1912.
*March* 11.

*Before Mr. Justice Banerji.*

IN THE MATTER OF THE PETITION OF NAWAL SINGH.*

*Criminal Procedure Code, section 476—"Court"—Civil Procedure Code* (1908), *section* 115—*Revision—Inexpediency of order no ground for revision on the civil side.*

The word "court" in section 476 of the Code of Criminal Procedure includes the successor of the Judge before whom the alleged offence was committed. *Bahadur* v. *Eradatullah Mallick* (1) followed.

Whether a particular order is expedient or not is not a ground on which the High Court can interfere in revision under section 115 of the Civil Procedure Code.

One Sumat Prasad brought a suit against Nawal Singh and others on two promissory notes. This was suit No. 200 of 1906. In answer to the claim Nawal Singh denied the genuineness of one of the promissory notes and pleaded payment of the other and produced a receipt. As regards both the promissory notes the

* Civil Revision No. 145 of 1911.

(1) (1910) I. L. R., 37 Calc., 642.