

think it necessary to refer. In our opinion there has been no proper trial of the suit and the case ought to be remanded for re-trial. We accordingly set aside the decree of the court below and remand the case with directions to re-admit it under its original number in the register and re-try it, bearing in mind the observations made above. The parties will of course be entitled to adduce further evidence. Costs of this appeal will be costs in the cause. We hope that as we have settled the principle upon which the case ought to be proceeded with, the parties will be wise enough to come to a settlement without incurring the expenses of a fresh trial.

Appeal decreed and cause remanded.

REVISIONAL CIVIL.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.

MAHABIR PRASAD (PLAINTIFF) *v.* THE COLLECTOR OF ALLAHABAD
(DEFENDANT)*.

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March, 19.

Civil Procedure Code (1908), order XLVII, rule 1—Review of judgement—Suit dismissed for want of necessary notice as well as on the merits—Ground of review only touching the merits.

A suit against the Court of Wards was dismissed on two grounds, (1) that the notice given by the plaintiff under the Court of Wards Act was defective, and (2) that the plaintiff was illegitimate. An application was made for review of judgement on the ground of discovery of new and important evidence on the question of legitimacy. *Held*, that the application was properly dismissed, inasmuch as the reversal of the decision on the question of legitimacy on the reception of new evidence would not lead to the modification or setting aside of the original decree.

THE facts of this case were as follows :—

Mahabir Prasad brought a suit for possession against the Collector of Allahabad as Manager of the Court of Wards. The suit was dismissed on two grounds—(1) that the notice given by the plaintiff as required by section 48 of the Court of Wards Act (Act No. III of 1899, Local) was defective, and (2) that the plaintiff was not the legitimate son of his father. The plaintiff did not appeal against the decree dismissing the suit, but after some time he applied for review of judgement on the ground of the discovery of new and important evidence on the question of the plaintiff's legitimacy. The Subordinate Judge issued notice

* Civil Revision No. 154 of 1913.

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to the other side and after hearing the parties rejected the application. The plaintiff applied in revision to the High Court.

Mr. A. H. C. Hamilton (with him Babu Beni Madho Ghosh), for the appellant submitted that the applicant should have been allowed an opportunity of producing evidence to substantiate his application for review of judgement. The court having issued notice to the other side had no jurisdiction to reject the application on the ground that the application for review was defective, inasmuch as it did not challenge the finding of the Subordinate Judge on the question of notice.

Mr. A. E. Ryves, for the opposite party, submitted that even if the court below had set aside its finding on the question of plaintiff's legitimacy, it could not have reversed the decree dismissing the suit, because the dismissal was further based on the finding that no proper notice had been given under the law. The finding on the question of the insufficiency of the notice was quite sufficient for the dismissal of the suit, and it was not necessary for the court to decide the issue as to the legitimacy of the plaintiff. He relied on *Bachchu Singh v. The Secretary of State* (1), and submitted that so long as the plaintiff did not challenge the finding of the court on the question of the sufficiency or otherwise of the notice under section 48 of Act III of 1899 (Local), he was not entitled to a reversal of the decree, and the court was justified in refusing to review its finding on the question of legitimacy. The order of the court below is correct.

Mr. A. H. C. Hamilton in reply submitted that the Subordinate Judge was bound to consider the application on the merits, and if he had considered the merits of the case and allowed the application for review, a new decree would have followed. He relied on *Kanhaiya Lal v. Baldeo Prasad* (2).

MUHAMMAD RAFIQ and PIGGOTT, JJ.—This is an application in revision asking us to set aside the order of the lower court rejecting an application for review filed by the applicant before it. It appears that the applicant instituted a regular suit in the court of the Additional Subordinate Judge of Allahabad, for the recovery of certain property on the allegation that he was the son

(1) (1902) I. L. R., 25 All., 187. (2) (1905) I. L. R., 28 All., 240.

of one Thakur Beni Bahadur Singh. The property in suit was at the time in the possession of the Court of Wards, on behalf of a minor. The claim was resisted on the ground, among others, that notice under section 48 of Local Act No. III of 1899, had not been given as prescribed in the Act, and that the plaintiff applicant was not the legitimate son of Beni Bahadur Singh. Both the pleas in defence were accepted and the claim was dismissed. About five months after the dismissal of the claim the applicant filed a petition in the court of the Subordinate Judge under order XLVII, rule 1, seeking to review the decree dismissing his claim on the ground of the discovery of new and important evidence on the question of his legitimacy. The learned Subordinate Judge issued a notice to the other side to show cause against the application. At the time of hearing the learned Judge declined to record evidence on behalf of the applicant, and, presumably after hearing arguments on both sides, rejected the application. He gave two reasons for dismissing the application, viz. (1) that on the face of it, it did not disclose any good ground for review; and (2) that even if the new and important evidence alleged to have been discovered by the applicant were to affect the decision as to his legitimacy, the decree will still stand good on the other issue in the case, viz., the want of proper notice. The applicant has come up to this Court in revision and contends that he should have been allowed an opportunity of producing evidence to make out a case for the granting of his application for review. It is said that if he had succeeded in persuading the lower court to accept the new evidence the decision on the question of legitimacy would probably have been modified and given in his favour. In that case he would have had an opportunity of coming up in appeal and re-opening the question of the want of notice. We think that the application for review was rightly rejected. The decision on the question of legitimacy on the reception of new evidence would not have modified or set aside the original decree. In our opinion the provision relating to review contemplates grounds which would alter or cancel the original decree. The application, therefore, fails and is rejected with costs.

Application rejected.

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