

other points which we have already discussed above. We agree with the court below that these are not *bond fide* suits but have been brought by the plaintiffs for the benefit of Sheoraj Singh. Hardeo Sahai is a man of straw. Shebaran Singh did not attempt to purchase when he had the opportunity. We, therefore, allow the appeals and set aside the decrees of the court below. The plaintiffs' suits will stand dismissed with costs in both courts

Appeal allowed.

REVISIONAL CIVIL.

Before Justice Sir Pramada Charan Banerji.

SULTANAT JAHAN BEGAM (APPLICANT) v. SUNDAR LAL AND OTHERS
(OPPOSITE PARTIES) *

Civil Procedure Code (1908), sections 10 and 115—Revision—Interlocutory order staying a suit—“Case.”

An application under section 10 of the Code of Civil Procedure for the stay of a suit is not a “case,” and an order for stay passed on that application is not the decision of a “case,” within the meaning of that word in section 115 of the Code, and no revision lies from such an order.

The word “case” in section 115 is not confined to a suit, but it cannot be construed to mean an interlocutory order in a suit such as an order under section 10 of the Code of Civil Procedure, although the order may be of such a nature that it cannot be interfered with even under the provisions of section 105 of the Code when an appeal is preferred from the final decree in the suit.

Muhammad Ayub v. Muhammad Mahmud (1) applied. *Bhargava and Co., v. Jagannath, Bhagwan Das* (2) doubted and distinguished.

THE facts of this case were as follows :—

The plaintiff applicant brought a suit against the first two defendants for their ejectment from a house. These defendants contested the suit on the ground that they had already vacated the house and that there were other persons who had an interest in the disputed house. Subsequently they presented an application to the court praying that these other persons, whose names are Ishaq Ahmad and Ismail Ahmad, should be made defendants to the suit. This application was granted and the aforesaid persons were added as defendants. After issues were framed and a certain amount of evidence was

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* Civil Revision No. 99 of 1919.

(1) (1910) I. L. R., 32 All., 628. (2) (1919) I. L. R., 41 All., 602.

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recorded, the two persons aforesaid made an application to the court to stay proceedings under section 10 of the Code of Civil Procedure, inasmuch as there had been a suit between them and the plaintiff and others in regard to the title of those defendants in respect of this and other property; that that suit had been decided by the Subordinate Judge and that an appeal from the decree of the Subordinate Judge was pending in the High Court. This application was granted and the Munsif made an order, apparently under section 10, staying proceedings until the decision of the appeal pending in the High Court.

Against this order the plaintiff applied in revision to the High Court.

Babu Piari Lal Banerji, for the applicant.

Munshi Panna Lal, for the opposite parties.

BANERJI, J. :—This application for revision has arisen under the following circumstances. The plaintiff applicant brought a suit, against the first two defendants for their ejection from a house. These defendants contested the suit on the ground that they had already vacated the house and that there were other persons who had an interest in the disputed house. Subsequently they presented an application to the court praying that these other persons, whose names are Ishaq Ahmad and Ismail Ahmad, should be made defendants to the suit. This application was granted and the aforesaid persons were added as defendants. After issues were framed and a certain amount of evidence was recorded, the two persons aforesaid made an application to the court to stay proceedings under section 10 of the Code of Civil Procedure, inasmuch as there had been a suit between them and the plaintiff and others in regard to the title of those defendants in respect of this and other property; that that suit had been decided by the Subordinate Judge and that an appeal from the decree of the Subordinate Judge was pending in the High Court. This application was granted and the Munsif made an order, apparently under section 10, staying proceedings until the decision of the appeal pending in the High Court. It is contended on behalf of the applicant plaintiff that the Court ought not to have stayed proceedings under section 10 and that that section was not applicable to the

case. It seems to me that, upon the facts as alleged by the defendants and accepting the view that those defendants had an interest in the property, that circumstance would not preclude the plaintiff from maintaining the present suit. It was alleged that the principal defendants had entered into possession as tenants of the plaintiff. If that was so, it was not open to them to contest the title of the plaintiff and it was wholly unnecessary to add Ishaq Ahmad and Ismail Ahmad as defendants. Furthermore, assuming that these persons had an interest in the house as held in the suit decided by the Subordinate Judge, the plaintiff urges that she, as one of the co-sharers, or at least as *benamidar* for her husband, who has been held to be a co-sharer, was entitled to maintain the suit for ejecting the principal defendants who, according to the plaintiff, were at the time of the suit mere trespassers. These, if established, would be valid grounds for disposing of the suit without staying proceedings for the final determination of the suit decided by the Subordinate Judge and now pending in appeal in the High Court. As already stated, the plaintiff for the purposes of this suit was prepared to admit the position that Ishaq Ahmad and Ismail Ahmad were part owners of the property subject to the payment of a certain sum of money which the decree of the court had ordered them to pay. If that was the position, section 10 did not justify the court in ordering proceedings to be stayed so as to keep the case pending in the Munsif's court for about two years, which would be the ordinary period after which the first appeal pending in this Court would be disposed of. This seems to me to be a case in which no order ought to have been passed under section 10, but the difficulty which arises is, has this Court power to interfere under section 115 of the Code of Civil Procedure? The suit has not yet been decided and the order for stay is not a decision of the suit. Is it a "case" within the meaning of that section? I feel it very difficult to hold that it is a "case" apart from the suit pending in the court below. It would be stretching language to hold that an application under section 10 is a case and an order passed on that application is the decision of a case. The word "case" in section 115 undoubtedly is not confined to a suit, but it cannot, in my opinion, be construed

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to mean an interlocutory order in a suit although the order may be of such a nature that it cannot be interfered with even under the provisions of section 105 of the Code when an appeal is preferred from the final decree in the suit. The principle of the ruling of this Court in the case of *Muhammad Ayab v. Muhammad Mahmud* (1) seems to me to be applicable to this case. I have been referred to the recent ruling in the case of *Bhargava and Co. v. Jagannath, Bhagwan Das* (2). With great respect I find great difficulty in following the view adopted in that case. Moreover, the point raised in that case is not similar to that which arises in this case. I am, therefore, unable to hold that an application for revision lies in this case under section 115 and I must dismiss the application on this ground. At the same time I would suggest to the learned Munsif the desirability of reconsidering his order upon proper application being made to him, and of hearing and disposing of the suit and not keeping it pending in his court for another two years or so. I make no order as to costs.

Application dismissed.

APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

GOBIND RAI (PLAINTIFF) v. BANWARI LAL AND OTHERS (DEFENDANTS).*

Jurisdiction—Civil and Revenue Courts—Rent-free grantee—Suit by rent-free grantee against zamindar to recover possession after alleged unlawful ejectment.

There is no section in the Agra Tenancy Act and no article in the schedule thereto which provides for a suit by a rent-free grantee to recover possession as such, in the event of his wrongful ejectment, even though that ejectment may be the act of his zamindar. *Nannhu v. Sri Thakurji Mahataj* (3) distinguished.

THIS was a suit for possession in a Civil Court by a rent-free grantee against his zamindars on the allegation that they had dispossessed him wrongfully. The defence, *inter alia*, was that the suit was not cognizable by the Civil Court. The Munsif

* First Appeal No. 105 of 1919, from an order of Kshirod Gopal Banerji, Subordinate Judge of Cawnpore, dated the 14th of March, 1919.

(1) (1910) I.L.R., 32 All., 623. (2) (1919) I. L. R., 41 All., 602.

(3) (1918) I. L. R., 41 All., 37.

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