

REVISIONAL CIVIL.

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

RAM PARSAN UPADHYA (DEFENDANT) v. NAGESHAR PANDE AND
OTHERS (PLAINTIFFS).*

1920
January, 17.

Review of judgment—Appeal—Revision—Revision of an order rejecting application for review not maintainable when the original decree has been the subject of appeal.

A Munsif decided a suit in favour of the plaintiff. One of the defendants filed an application for review of judgment, whilst another of them filed an appeal in the court of the District Judge. The application for review was rejected, and the applicant then applied in revision to the High Court against the order of rejection. Before, however, this application came on for hearing, the appeal before the District Judge had been disposed of.

Held that, although the Munsif might have been wrong in rejecting the application for review, the Munsif's decree no longer subsisted and the application for revision could not be heard.

THIS was an application in revision from an order of a Munsif rejecting an application for review of judgment. The facts of the case are fully stated in the judgment of the Court.

Munshi Jang Bahadur Lal, Munshi Lakshmi Narain, and Munshi Shiva Prasad Sinha, for the applicant.

Munshi Iswar Saran, for the opposite parties.

MUHAMMAD RAFIQ and PIGGOTT, JJ.:—It appears that there are three brothers called Rameshar Pande, Nageshar Pande and Sri Ram Pande, who according to the allegation of Nageshar Pande, the plaintiff, are members of a joint and undivided Hindu family. Rameshar Pande and Sri Ram Pande, two of the brothers, executed a deed of sale in respect of some of the family property in favour of Parmanand Tiwari. One Ram Parsan Upadhyia sued to pre-empt the sale and obtained a decree. After the passing of the pre-emption decree Nageshar Pande brought the suit out of which this application for revision has arisen for a declaration that the sale by Rameshar Pande and Sri Ram Pande in favour of Parmanand Tiwari was invalid and that the decree of Ram Parsan Upadhyia on the ground of pre-emption was also invalid and inoperative. Nageshar Pande impleaded as defendant in the case, his two brothers Rameshar Pande and Sri Ram Pande, the vendors, Parmanand Tiwari, the vendee, and Ram Parsan Upadhyia, the pre-emptor. The

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claim was resisted on various grounds. It was decreed by the learned Munsif of Bansgaon on the 10th of January, 1919. Ram Parsan Upadhyas, the pre-emptor, filed an application before the learned Munsif for review of judgment on the 12th of February, 1919. Two days after, Ram Parsan filed an appeal in the District Judge's Court from the decree of the learned Munsif. The application for review was heard and disposed of on the 31st of May, 1919. The learned Munsif held that as an appeal had been filed by Ram Parsan, which appeal was pending at the time, the application for review was not maintainable. He accordingly dismissed it on the 31st of May, 1919. On the 4th of July, 1919, Ram Parsan came up in revision to this Court alleging that the pendency of an appeal on his behalf in the court of the District Judge was no ground for the rejection of his application for review by the learned Munsif. On the 7th of July, 1919, a learned Judge of this Court admitted the application and issued notice to the other side to show cause. About a week after, namely, on the 15th of July, 1919, the appeal of Ram Parsan was heard by the learned District Judge and disposed of. The appeal was dismissed. It is contended on behalf of Ram Parsan, the applicant before this Court, that the order of the learned Munsif of Bansgaon rejecting his application for review is erroneous on the face of it in view of the case-law on the subject. The applicant relies upon the following cases:—*Chenna Reddi v. Peddaobai Reddi* (1), *Narayan Purushottam Gargote v. Laxmibai* (2) and *Partab Singh v. Jaswant Singh* (3). The case-law is no doubt in favour of the contention for the applicant, but the circumstances of the three cases relied upon by the applicant were quite different from those in his case here. In the cases relied upon, the appeal had not been disposed of. In the present case the application of Ram Parsan before this Court has come up for hearing after the disposal of his appeal by the learned District Judge. The decree of the learned Munsif no more subsists. The final decree in the case is that of the learned District Judge. No doubt the order of the learned Munsif rejecting the application for review

(1909) I. L. R., 32 Mad., 416.

(2) (1914) I. L. R., 38 Bom., 416.

(3) (1919) I. L. R., 42 All., 79.

was erroneous. It would, however, serve no useful purpose now to set aside that order, inasmuch as the decree sought to be reviewed no more exists. The decree which subsists at present is that of the district court. We therefore disallow the application and dismiss it. Considering all the circumstances the parties will bear their own costs.

Application rejected.

APPELLATE CIVIL.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

RAM BHAROSE AND OTHERS (PLAINTIFFS) v. RAMPAL SINGH AND OTHERS
(DEFENDANTS.)*

Act No. IV of 1882, (Transfer of Property Act), section 52—"Contentious suit"—Suit decided ex parte, but not fraudulent or collusive.

1920
January, 30.

If a suit is neither fraudulent nor collusive, it may be none the less a contentious suit within the meaning of section 52 of the Transfer of Property Act, 1882, notwithstanding that it is decided *ex parte*.

THIS was an appeal under section 10 of the Letters Patent from the judgment of a single Judge of the Court. The facts of the case are fully stated in the judgment under appeal, which was as follows:—

The subject matter of dispute in this second appeal is a moiety share in certain fixed-rate holdings which are distinctly numbered and set out in the plaint. The plaintiffs are Ram Bharose and his sons. The defendants are arrayed in the plaint as fourteen different persons. They may be sub-divided into at least three parties, the first party consisting of Kalka Sonar and Dubri Sonar, the second of Rampal Singh, Harpal Singh, Ram Naresh and Bachcha Singh, who may be described as defendants second party, and Fakir Koeri and others, who may be described as defendants third party. According to the plaint the subject matter of dispute consists of land, etc., cultivatory holdings of plaintiffs and defendants first party. The property was a joint holding. Defendants first party are said to have sold their share to certain defendants under a sale deed, dated the 30th of June, 1906. We are not really concerned with this property. It is difficult to understand why they were ever impleaded in the

* Appeal No. 166 of 1917, under section 10 of the Letters Patent.