REVISIONAL CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

1920
December, 14.

CHANDU LAL AND OTHERS (DEFENDANTS) *v.* KOKA MAL (PLAINTIFF).*

Civil Procedure Code (1908), section 115—*Order returning plaint for want of jurisdiction—Order reversed on appeal—Revision.*

The court to which a plaint in a suit based on contract was presented returned the plaint for presentation to the proper court upon the ground that no part of the cause of action had arisen within the jurisdiction. The plaintiff appealed against this order, and the appellate court reversed the order and remanded the suit for trial on the merits. *Held* on application in revision by the defendants that no revision would lie, even if the conclusions of the appellate court were wrong either in fact or law. *Mathura Nath Sarkar* v. *Umes Chandra Sarkar* (1) and *Jwala Prasad* v. *East Indian Railway Company* (2) followed. *Badami Kuar* v. *Dinu Rai* (3), *Zamiran* v. *Fateh Ali* (4), *Sri Narain* v. *Jagannath* (5) and *Vuppuluri Atchayya* v. *Sri Kanchumarti Venkata Seetaramachandra Rao* (6) referred to.

THE facts of this case are fully set forth in the judgment of the Court.

Mr. *T. A. Bradley*, for the appellants.

The Hon'ble Munshi *Narain Prasad Asthana*, for the respondent.

PIGGOTT and WALSH, JJ.:—This is an application in revision against an order of the District Judge of Agra, allowing an appeal from the Subordinate Judge who had returned the plaint upon the ground that he had no jurisdiction to entertain the suit, and holding that the suit was properly brought in Agra and directing the first court to restore the case and try it on the merits. The suit was brought in the court of the Subordinate Judge of Agra by some merchants who alleged that the defendants, who were a firm carrying on business at Duggerala in the province of Madras, had agreed by correspondence conducted partly by telegram to purchase on behalf of the plaintiffs a certain quantity of chillies at a given price, that the defendants had told the plaintiffs that they had purchased a large quantity of these goods amounting in value to Rs. 1,600, that such sum had been paid by the plaintiffs and accepted by

* Civil Revision No. 51 of 1920.

(1) (1897) 1 C. W. N., 626.
(2) (1913) 16 A. L. J., 535.
(3) (1886) I. L. R., 8 All., 111.
(4) (1904) I. L. R., 32 Calc., 140
(5) (1917) 15 A. L. J., 653.
(6) (1912) 24 M. L. J., 112.

the defendants in the form of currency notes in the month of February, that in the following month (March) when the price of chillies had gone up the defendants had begun to allege that the goods had become deteriorated; that such allegation was untrue and that the defendants had wilfully substituted goods of inferior quality and despatched them and others which arrived partly damaged according to the plaintiff, by damp, and partly short in amount. The plaintiffs went on to allege that the defendants had been guilty of an act of fraudulent substitution of goods which, if they had been up to the quality stipulated by the plaintiff, would have cost the defendants a good deal more to purchase, and that such fraud was only discovered by the plaintiff when the goods arrived at Agra and were examined by the plaintiff's surveyors. The Subordinate Judge held that the contract was made in Madras, that it was performed in Madras, and that the breach, if any, by the defendants had been wholly committed in Madras and that no part of the cause of action arose in Agra. The learned District Judge, on the other hand, held that the contract was made in Agra and that in any case part of the cause of action, to the extent to which the actual consignment differed from the amount alleged to have been despatched, and also to the extent of the substitution of inferior goods by the defendants to the plaintiff and the loss arising out of these two matters, had been suffered by the plaintiff at Agra. An application was made to this court *ex parte*, which was admitted by a Judge in this Court in revision, against the order of the District Judge, and in such application this Court is asked to set aside the order of the lower appellate court upon the ground that the lower appellate court has erred in holding that the contract was made at Agra and in holding that any breach, either by non-delivery or by fraud, took place at Agra. It is important to point out how the matter is brought before the High Court, because a preliminary objection is raised to the jurisdiction of this Court to interfere in revision with an order of that kind.

In the first place no appeal lies to the High Court from the order of the District Judge. By order XLIII, rule 1, an appeal is given from such an order returning a plaint as was made by

1920

CHANDU LAL v. KOKA MAL.

the Subordinate Judge in this case, and such appeal is given to the District Judge. Section 104 expressly permits appeals from certain orders, but provides by sub-section (2) that no appeal shall lie from any order passed in appeal under that section. The order of the District Judge now called in question is such an order, and the Legislature has in express terms prohibited any appeal being brought from it. It is to be observed that it would have been a simple matter if the Legislature had intended to confer upon this Court any jurisdiction over such orders, or to include such orders in the revisional powers of the High Court, for it to have said so when it was expressly prohibiting any appeal. We have, therefore, to see whether in any way the order of the District Judge can be brought within the terms of section 115 of the Code of Civil Procedure.

We are clearly of opinion that it cannot. No attempt is made either in the grounds challenging the order, or in the argument, nor indeed could any attempt be made, to contend that the District Judge has either failed to exercise his jurisdiction, or assumed jurisdiction which did not belong to him, or exercised his jurisdiction with any material irregularity. All that he has done has been to hear an appeal which he was bound to hear, to review the plaint and the correspondence which was put in evidence in the first court, and to consider the decision of the first court upon the plaint and upon the correspondence, and he has come to a conclusion of mixed fact and law, as he was bound to do in hearing the appeal brought before him in due course of law. This view has already been taken by this Court, and certainly also in Calcutta, in two cases. The Calcutta case is one of considerable standing. It was decided in the year 1897, *Mathura Nath Sarkar* v. *Umes Chandra Sarkar* (1). There the Chief Justice and another Judge held that the High Court had no jurisdiction to interfere, for it could not be said that the lower appellate court had acted in the exercise of its jurisdiction illegally or with material irregularity simply because its decision upon the question of jurisdiction of the first court might be erroneous in law. The same reason, namely, that if the learned District Judge had committed an error he had done

(1) (1897) 1 C. W. N., 626.

so in the exercise of his jurisdiction in entertaining an appeal which he was bound to entertain, was given in the recent decision of this Court in *Jwala Prasad* v. *East Indian Railway* (1). We agree with both those decisions and we do not think that any of the other authorities cited to us are really inconsistent with those decisions in regard to the specific matters which they decide. As a matter of fact, it is not a matter of great importance to the litigating public where the contention is that the first court has gone wrong either in assuming jurisdiction or in refusing jurisdiction and the second court has either upheld it or disagreed with it, because it seems to us clear from the specific words of section 115 of the present Code, which in this respect does not differ from the provisions of section 622 of the former Code, that the order of the first court may be called for by this Court in calling for the record and in a proper case set aside in revision. It being an order from which no appeal lies to the High Court, and an order, if a good case for revision were made out, in which it could be said that the first court had either failed to exercise its jurisdiction or had wrongly assumed it, this Court would have jurisdiction. An illustration of that view is contained in an authority of this Court which is binding upon us and which never seems to have been dissented from, namely, *Badami Kuar* v. *Dinu Rai* (2). That was a court of five Judges presided over by the then Chief Justice. The question was referred to a Full Bench by a Bench of two Judges, who in their referring order pointed out that the petition in revision with which they had to deal questioned an order of the Munsif, who, it was alleged, had erroneously returned the plaint, refusing to exercise a jurisdiction which he undoubtedly had. There had been in that case an appeal against the order of the Munsif to the District Judge, but the applicant in revision, rightly according to the view of the Full Bench, came direct to the High Court and complained against the original order of the Munsif, and it is quite clear from the judgments in the case that the High Court did no more than consider whether the Munsif had been acting within his jurisdiction or not in making the order that he did, and decided that he had wrongly denied his own jurisdiction, and returned the suit to him

(1) (1918) 16 A. L. J., 535. (2) (1886) I. L. R., 8 All., 111.

1920

CHANDU LAL v. KOKA MAL.

to dispose of it on the merits. It is, therefore, clear that the view taken in 1886 and formally adopted and confirmed by the Full Bench decision was that it would be wrong to challenge the decision of the District Judge in revision, otherwise no reason can be suggested why the petitioner in that case did not do so, but that the only course open was to apply to the High Court direct in revision against the order of the Munsif. It seems, therefore, to us that the practice in this Court from 1886 to 1917 has been consistent and clearly understood, and even if we were disposed to take a different view we ought to follow the practice laid down in those two authorities. We have been referred to at least two cases, one in Calcutta and one in Allahabad, where it may be said that a departure has been made from this regular procedure, and that the result at any rate is inconsistent with the practice as laid down by the authorities to which we have referred. It is to be borne in mind, however, in looking at cases that it is of the utmost importance to see whether the Judges are really professing to lay down a definite rule of practice or to interpret a specific order or rule of the Court or section of the Code, or whether they are merely doing in one form what they could equally well do in another form, the question of form being at the moment of no importance, inasmuch as the parties themselves do not raise the question so as to call for a definite decision upon the point from the Court. In our view both these cases may be so explained. To take the first in order of date, in *Zamiran* v. *Fateh Ali* (1) it does appear as though the Calcutta High Court definitely held, departing from the case of *Mathura Nath Sarkar* v. *Umes Chandra Sarkar* (2) mentioned above, that the High Court had jurisdiction in revision over the order of the District Judge confirming the original order of the trial Court returning the plaint. It is to be observed, however, that from the practical point of view the case stood in the way which we have pointed out earlier in this judgment a case may stand, and in the way in which it did stand in *Badami Kuar* v. *Dinu Rai* (3), that is to say, it was open to the High Court to have rejected the application in revision made to them from the District Judge, and it was open to the disappointed party to have come to the High Court with a

(1) (1904) I. L. R., 32 Calc., 146. (2) (1897) 1 C. W. N., 626.
(3) (1886) I. L. R., 8 All., 111.

fresh application against the original order of the first court. All that the Calcutta High Court really did was to say that the District Judge had erred in law in confirming the decision of the Subordinate Judge, and unless the point were argued before them and objection taken at the Bar, they may reasonably have thought that it was a fit case for interfering with the order of the first court. Having regard to the fact that they did not take the trouble to examine the convincing reasons contained in the earlier decisions of their own Court, and that if they had been really differing in principle from that decision to which the Chief Justice of the Court had been himself a party it is probable that they would have given some reason for so doing, it seems likely that it was not considered worth while to raise the distinction which undoubtedly exists between the two orders. The other case is one to which a member of this Court was a party, namely, *Sri Narain* v. *Jagannath* (1). That case is in fact on all fours with the case of *Jwala Prasad* v. *East Indian Railway* (2). And we are clearly of opinion that if the point had been raised the court before which that case was argued ought to have refused to interfere in revision with the order of the District Judge. No mention is made of the point in the report in the Allahabad Law Journal. We have examined the book on the file of this Court and there is nothing to show that any objection on that ground was taken before the Court entertaining the revision. Here again the same practical explanation may be tendered. The second court had agreed with the first court. It was clear that a serious mistake on the question of jurisdiction had been made, and if objection had been raised by the respondent in revision to the competency of the High Court to entertain the application, the result would merely have been that a fresh application might have been made, and would certainly have been competent, by the applicant, against the order of the first court. Under these circumstances, in our opinion, neither *Zamiran* v. *Fateh Ali* (3) nor *Sri Narain* v. *Jagannath* (1) can be regarded as authority for anything. They do not profess to interpret the sections which are really applicable to this question nor to differ in principle

(1) (1917) 15 A. L. J., 653. (2) (1918) 16 A. L. J., 535.

(3) (1904) I. L. R., 32 Calc., 146.

1920

CHANDU LAL
v.
KOKA MAL.

from any previous decision. The circumstances under which, if a High Court has jurisdiction to entertain a revision at all, it may see its way to do so in the exercise of its discretion or may on the other hand refuse to do so, are so varied, that it is fallacious to treat the decision in any particular case as laying down any principle, without first ascertaining exactly how the matter came to be brought before the Court and seeing whether the Court purported to decide fundamental questions as to the existence of its own jurisdiction. Unless it did so, the case may be treated merely as an example of a particular application of a particular rule, and not as an authority or a precedent to be followed in any subsequent case that may arise where the circumstances are different. It is only necessary, in conclusion upon this preliminary point, to refer to a decision of the Madras High Court, viz., *Vuppuluri Atchayya* v. *Sri Kanchumarti Venkata Seetaramachandra Rao* (1) where the point we are now deciding obviously gave the High Court considerable difficulty. A majority of two out of three Judges got out of the difficulty by holding that the lower appellate court had exercised its jurisdiction irregularly in compelling the first court to act without jurisdiction. Speaking for ourselves we prefer the view taken by the dissentient Judge in that case, which is the view we are ourselves taking in this case.

Although we do not entirely share the views of the lower appellate court upon the first question as to where the contract was made, on the other hand, we are by no means satisfied that in the exercise of our discretion we should, if we had heard the respondent upon the merits, necessarily have interfered with the order of the District Judge, if we had held that we had power so to interfere. We content ourselves with saying that we do not think any injustice will be done to anybody even if the order of the District Judge is erroneous either in law or in fact. So far as we can tell it is just one of those cases in which,—the alleged discovery of the short delivery of the inferior quality and condition of the goods despatched by the defendants to the plaintiff having been made in Agra,—the convenience of the court and the interests of justice will be equally served if it is tried in Agra

(1) (1912) 24 M. L. J., 112.

instead of Madras. However that may be, we hold that as a matter of law, the preliminary objection must be sustained and the application in revision be dismissed with costs.

Application rejected.

1920

CHANDU LAL v. KOKA MAL.

APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

SUGHRA BEGAM AND OTHERS (OBJECTORS) *v.* MUHAMMAD MIR KHAN (APPLICANT). *

1920 *December*, 15.

Act No. VII of 1889 (*Succession Certificate Act*), *section* 4—*Certificate not to be granted for collection of part only of a debt—Debt in part irrecoverable or extinguished—Muhammadan law—Dower.*

On the death of a Muhammadan lady to whom her dower was due the heirs were her husband, her brother, and three daughters. The brother applied for a succession certificate in respect only of the share of the dower debt to which he was entitled as an heir. On objection being raised by the daughters that a certificate could not be granted for part only of the debt, the District Judge, finding that a portion of the debt was satisfied by reason of the husband inheriting it as an heir and that the recovery of one of the daughters' shares was time-barred, gave the applicant a certificate in respect of the remainder.

Held that, on the reasoning upon which the Full Bench decision in *Ghafur Khan* v. *Kalandari Begam* (1) was founded it was not competent to the District Judge to grant a certificate except for the whole of the dower debt. *Mohamed Abdul Hossain* v. *Sarifan* (2) and *Sreemutty Annapurna Dassy* v. *Nalini Mohan Das* (3) dissented from.

THE facts of this case are fully stated in the judgment of the Court.

Munshi *Gulzari Lal*, for the appellants.

Dr. *Kailas Nath Katju*, for the respondent.

PIGGOTT and WALSH, JJ. :—This is an appeal arising out of a proceeding under the Succession Certificate Act. The point in issue is a simple one. A Muhammadan lady died leaving as her heirs a husband, a brother and three daughters. An application for a succession certificate in respect of the dower debt due to the lady was made by the brother, who is the respondent to this appeal. He asked for a succession certificate in respect of that share only

* First Appeal No. 66 of 1920 from an order of E Bennet, District Judge of Farrukhabad, dated the 12th of March, 1920.

(1) (1910) I. L. R., 33 All., 327. (2) (1911) 16 C. W. N., 231;

(3) (1914) 18 C. W. N., 836.