

1921

ABDUL
HAKIM KHAN
v.
RAM GOPAL.

The bond now in suit was executed in the year 1907 and the finding of the court below is that the mistake which was made in drawing up the deed of 1897 was again repeated in the document of 1907 now in suit. The learned Judge felt no doubt that there had been a clerical error and accordingly he allowed the plaintiffs' claim in respect of the property in mahal Ismail Beg.

We cannot allow the argument that the learned Judge of the court below was not entitled to look at the earlier documents of 1892 and 1897. In proviso (1) to section 42 of the Evidence Act it is laid down that any fact may be proved such as . . . mistake in fact or law which would entitle any person to any decree or order relating to a document. It cannot, therefore, be doubted that it was open to the plaintiffs to prove this mistake and the evidence which they produced to prove that fact was certainly admissible. The result, therefore, is that we affirm the decree of the court below and order that this appeal be dismissed with costs.

Appeal dismissed.

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December, 14.

REVISIONAL CIVIL.

Before Mr. Justice Figgott and Mr. Justice Walsh.

MAHADEO SAHAI (APPLICANT) v. THE SECRETARY OF STATE
FOR INDIA IN COUNCIL AND OTHERS (OPPOSITE PARTIES).*

*Civil Procedure Code (1908), section 115—Application for leave to sue in
formâ pauperis—Order rejecting such application—Revision.*

*Held by Walsh, J., that no application in revision under section 115 of
the Code of Civil Procedure will lie from an order rejecting an application for
leave to sue in formâ pauperis. Buddhu Lal v. Mewa Ram (1) followed.*

THE applicant in this case applied to the Subordinate Judge of Jaunpur for leave to sue *in formâ pauperis*. The suit which he proposed to file was against the Secretary of State for India in Council and other -defendants. The Subordinate Judge, having regard to the particulars of the suit which were filed along with the application, came to the conclusion that they disclosed no cause of action against the Secretary of State, and upon that ground dismissed the application.

* Civil Revision No. 119 of 1920.

(1) (1921) I. L. R., 43 All., 564.

The applicant applied in revision to the High Court.

Munshi *Harnandan Prasad*, for the applicant.

Dr. *S. M. Sulaiman* for the opposite parties.

PIGGOTT, J.:—This is an application in revision against an order rejecting an application for leave to sue *in forma pauperis*. So far as I am concerned I reserve the question whether an application in revision lies against such an order. Personally I think the question is distinguishable from that decided recently by a Full Bench of this Court (1), in that no suit was ever instituted in the court below, as the suit would only have commenced if the application had been accepted and the petition registered as a *plaint*. Moreover, the effect of the order brought before us in revision was to dispose, for the time being, of the entire matter pending in that court. However, reserving this point, I am clearly of opinion that the application before us must fail. The court below has written a long order, certain portions of which do in my opinion go beyond the jurisdiction of the court, at the particular stage then reached, as limited by rule 5 of order XXXIII of the Code of Civil Procedure. Nevertheless the order before us does in my opinion give adequate reasons, proceeding upon materials then properly before the court for rejecting this application. In substance the court below has held that the petition accompanying the application discloses no cause of action against the first defendant, namely, the Secretary of State for India in Council. In so holding I think the court below was clearly right and the finding has not been seriously contested in argument before us. All that the court below has done, after coming to that conclusion, is to say that the application as it stands, supported by the statement of particulars (*vide* order XXXIII, rule 2 of the Code of Civil Procedure) which actually accompanied it, should be rejected on the ground that it discloses no cause of action against the principal defendant. The question whether an application, supported by a somewhat different set of particulars, and alleging a cause of action against some only of the other defendants, would or would not have been maintainable, and would or would not have been accepted by the court below, is a matter which that court was not called upon to decide and has not

(1) (1921) I. L. R., 48 All., 564.

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decided. This application was in my opinion rightly rejected for the reasons already given. I would, therefore, dismiss this application with costs.

WALSH, J. :—I agree on the merits and I merely wish to add that in my view we could not have entertained this application on any ground, it not being a "case decided" within the meaning of the decision of the recent Full Bench (1), and that any previous decisions of this Court which have admitted revisions in the case of the rejection of an application to be allowed to sue *in forma pauperis* must be treated as having been overruled.

Application rejected.

APPELLATE CIVIL.

1921
December, 15.

Before Mr. Justice Ryves and Mr. Justice Gokul Prasad.

SURJAN SINGH AND OTHERS (DEFENDANTS) v. CHATURA KUNWAR
(PLAINTIFF).*

Act (Local) No. II of 1901 (Agra Tenancy Act), section 201 (3)—Suit for profits—Plaintiff a recorded co-sharer at date of suit—Effect of decision of Civil Court against plaintiff's title post litem motam.

Where the decision of a suit in a Court of Revenue depends upon the determination of a question of title, the Court of Revenue is bound to follow the decision of a competent Civil Court on such question, even though that decision may have been come to while the suit in the Court of Revenue is in the stage of appeal. *Bhawani Singh v. Dilawar Khan* (2) followed.

THE facts of this case are fully stated in the judgment of RYVES, J.

Dr. Surendra Nath Sen and Babu Surendra Nath Gupta, for the appellants.

Babu Saila Nath Mukerji, for the respondent.

RYVES, J. :—Musammat Chatura Kunwar who was recorded in the khewat as a co-sharer brought the suit, out of which this appeal arises, under section 164 of the Agra Tenancy Act for her share of the profits for the years in suit against her deceased

* Second Appeal No. 1287 of 1919, from a decree of E. H. Ashworth, District Judge of Cawnpore, dated the 3rd of April, 1919, confirming a decree of Inayat Hussain, Assistant Collector, First Class of Cawnpore, dated the 15th of June, 1918.

(1) (1921) 1. L. R., 48 All., 564. (2) (1909) 1. L. R., 31 All., 253.