REVISIONAL CIVIL.

Before Mr. Justice Boys and Mr. Justice Kendall.

CHATARBHUJ (APPLICANT) *v.* HARNAND LAL (OPPOSITE PARTY).* 1927 *July*, 19.

Civil Procedure Code, sections 115 *and* 151; *order XXXII, rule* 15—*Act No. IV of* 1912 (*Indian Lunacy Act*), *section* 62—*Lunacy—Distinction between inquiry under the Lunacy Act and under the Civil Procedure Code—Inherent powers of High Court.*

The matter for determination under section 62 of Act No. IV of 1912 is not the same as the matter for determination in an application under order XXXII, rule 15, of the Code of Civil Procedure. A court, therefore, ought not to refuse to consider an application made to it under order XXXII, rule 15, for the sole reason that another court, of superior jurisdiction, has arrived at a certain decision in a matter under Act No. IV of 1912; and if it does so, this refusal is liable to be called in question under section 151 of the Code of Civil Procedure. *Harnand Lal* v. *Chaturbhuj* (1), referred to.

THE facts of this case sufficiently appear from the judgement of the Court.

Dr. *N. C. Vaish*, for the applicant.

Dr. *Kailash Nath Katju* and Mr. *B. Malik*, for the opposite party.

BOYS and KENDALL, JJ. :—The dispute in connection with which this civil revision arises has already been before this Court and the matter then in dispute was the subject of Civil Revision No. 125 of 1925, decided on the 19th of June, 1926, and reported in *Harnand Lal* v. *Chaturbhuj* (1). The trouble arises out of a contract for sale of a house entered into on the 8th of September, 1923, by which Chatarbhuj, son of Mewa Ram (not the Chatarbhuj, son of Hem Raj, who is the applicant before

*Civil Revision No. 94 of 1927.
(1) (1926) I.L.R., 48 All., 356.

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us), agreed to purchase from Harnand Lal, the opposite party in this application, the house in question for Rs. 95,000. He failed to carry out the contract after having paid Rs. 15,000, and Harnand Lal brought a suit against him in the court of the Subordinate Judge. On the 2nd of May, 1925, Chatarbhuj, son of Hem Raj, applied under order XXXII, rule 15, to be made guardian of the defendant Chatarbhuj, son of Mewa Ram. In August, 1925, Chatarbhuj, son of Hem Raj, started lunacy proceedings under Act No. IV of 1912 in the court of the District Judge, asking that Chatarbhuj, son of Mewa Ram, might be declared to be not of sufficiently sound mind to be able to manage his property and his affairs. To this proceeding he did not make Harnand a party. The next step was a request by Chatarbhuj, son of Hem Raj, to the Subordinate Judge to stay proceedings in his court on the ground of the pendency of the lunacy proceedings in the court of the District Judge. The learned Subordinate Judge refused to stay the proceedings on the ground that if the lunacy proceedings ended in the dismissal of the application, he, the Subordinate Judge, would have to proceed with his inquiry under order XXXII, rule 15. Plaintiff applied to the High Court in revision of this order refusing to stay, and the High Court stayed proceedings by the judgement to which we have already referred, reported as *Harnand Lal* v. *Chaturbhuj* (1).

The lunacy proceedings continued in the court of the District Judge—Harnand having been made a party at his own request. The learned District Judge dismissed the application, and Chatarbhuj, son of Hem Raj, appealed to this Court with no success. The judgement of their Lordships, Mr. Justice WALSH and Mr. Justice BANERJI, is very brief and guarded, clearly, as it appears to us, with the intention of not prejudicing the decision

(1) (1926) I.L.R., 48 All., 356.

at which the Subordinate Judge would later have to arrive under order XXXII, rule 15. The matter then had reached the stage at which the lunacy proceedings in the court of the District Judge had finally terminated by an order of dismissal, which had been upheld by this Court, and it remained for the Subordinate Judge to decide the matter under order XXXII, rule 15, between Chatarbhuj, son of Hem Raj, and Harnand. Both of these persons made applications to the Subordinate Judge : the one that he should hold an inquiry to determine under order XXXII, rule 15, the question whether Chatarbhuj, son of Mewa Ram, the defendant in the suit, was a person adjudged to be of unsound mind, or a person who, though not so adjudged, was by reason of unsoundness of mind or mental infirmity incapable of protecting his interests in the suit; the other, Harnand, asking for the application of Chatarbhuj, son of Hem Raj, to be struck off as Chatarbhuj, son of Mewa Ram, had been found not to be a lunatic.

On the 6th of April, 1927, the learned Subordinate Judge dismissed the application. He did not hold any independent inquiry whatsoever, but relied solely on the judgement of the District Judge in the lunacy proceedings as being a judgement between the parties to the application which he was deciding, and on the ground that " that court indirectly finally decreed that the defendant was not of such an unsound mind as to be incapable of protecting his interests ".

Chatarbhuj, son of Hem Raj, has brought the matter before this Court, asking it to exercise its powers under section 151 of the Code of Civil Procedure. We were not asked by the applicant to exercise powers under section 115 of the Code of Civil Procedure. No argument was addressed to us by either side as to that section. Counsel for the respondent proposed to argue that the application was not one which came properly within section 115 of

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the Code of Civil Procedure, but as the applicant had not contended that he had any right to apply under section 115, we stopped counsel for the respondent and only asked him to address us in reference to section 151. On subsequent consideration of the case, there is an aspect of it which suggests that it is by no means certain that the application would not lie under section 115. The contention that section 115 is not applicable was of course based on the view that the " case " had not been decided. But it is by no means certain that this is a correct view. One " case " that was before the Subordinate Judge was the suit between Harnand and Chatarbhuj, son of Mewa Ram. The application of Chatarbhuj, son of Hem Raj, against Harnand might at least arguably be regarded as a matter quite distinct in itself and separate from the main suit. To that application Chatarbhuj, son of Mewa Ram, does not even appear to have been made a party. As, however, this aspect of the case was not argued before us but only that concerning section 151, we are content to decide it on the basis of the applicability of that section.

To consider first the question of whether the order of the learned Subordinate Judge was or was not a proper order in that he dismissed the application relying solely upon the order of the District Judge in the lunacy proceedings and without making any inquiry himself.

In our view it was clearly not a proper order and he did not exercise the jurisdiction which was vested in him. The matter for determination before the learned District Judge was one within section 62 of Act IV of 1912. He had to determine whether Chatarbhuj, son of Mewa Ram, was a person " of unsound mind and incapable of managing himself and his affairs ". Under order XXXII, rule 15, the learned Subordinate Judge had to determine whether Chatarbhuj, son of Mewa Ram, not being a person already adjudged to be of unsound mind, was " by

reason of unsoundness of mind *or mental infirmity* incapable of protecting his interests in the suit ".

Had the two issues to be determined by the respective courts been identical, there can be no question but that the learned Subordinate Judge would have been justified in holding himself bound by the finding of the District Judge which had been arrived at *inter partes*. But the language of the two provisions is not the same and we are not prepared to hold that a finding by the learned District Judge that Chatarbhuj, son of Mewa Ram, was not a person of unsound mind and incapable of managing his affairs necessarily precluded a finding by the learned Subordinate Judge that by reason of " mental infirmity he was incapable of protecting his interests in the suit ". We think, therefore, that it was incumbent upon the learned Subordinate Judge to come to a finding upon his own independent judgement after independent inquiry as to whether order XXXII, rule 15, required the appointment of a guardian, and he was not entitled to adopt the finding of the learned District Judge as conclusive on the point, and this view was clearly taken by the Subordinate Judge or his predecessor when he, at an early stage of the proceedings, refused to stay his inquiry for the reason we have quoted above. We must not be taken to suggest anything whatever in regard to the merits. It was and is for the Subordinate Judge alone at this stage to determine that question. It is for this reason that we do not discuss or lay emphasis in any way upon any of the phrases in the judgement of the learned District Judge, pointing in one direction or the other, on which stress has been laid before us in argument. We content ourselves, therefore, with noting that his only *finding* was that " there is certainly not sufficient material on the record to justify taking action under the Lunacy Act ".

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It was contended naturally for the opposite party that this Court has no power to interfere in exercise of the inherent powers vested in it and saved to it by section 151 of the Code of Civil Procedure in a matter in which no " case " had been decided. It was contended that we had no power to go beyond the provisions of section 115 of the Code of Civil Procedure. This is a contention which in our view is, on the face of section 151 itself, untenable. It is clear that the section itself assumed that the court has some inherent powers to make such orders as may be necessary for the ends of justice or to prevent an abuse of the process of the court and nothing in the Code of Civil Procedure is to be deemed to limit or otherwise affect those powers. The further argument, of course, was addressed to us that if we interfere in the exercise of our inherent powers in a case like this, there is no limit to the number of cases in which we might similarly be asked to interfere. It is not an argument which carries any weight with us. There is nothing whatever to stop any applicant making any frivolous application when he pleases, short of being guilty of contempt of court. It is for this Court to deal with such applications and, in the great majority of them, where frivolous, the applicant will be penalized by having to pay the costs. In any case that is not an argument which can carry any weight to restrain this Court from interfering in a proper case.

Again it is of course urged " what was the use of the legislature laying down conditions in section 115 to govern interference in revision if the court can interfere under some other power vested in it, uncontrolled by at least one of the conditions laid down in section 115?" This might be countered by a similar question " what is the use of the legislature by section 151 saving the court's inherent powers from being affected by the Code if those powers are never to be exercised?" But there is also a

direct answer. The powers under section 115 are the restricted powers normally to be exercised, but the legislature itself recognized that it was not possible to foresee and make provision for all cases that might arise and expressly thought fit to reserve the inherent powers unaffected by the Code to meet such cases. This obviously suggests that such powers should be exercised with restraint and caution, but equally obviously suggests that they were intended to be exercised in suitable cases.

In the present case there is a strong consideration inclining us to exercise our powers. We have the dismissal of the application asking for an inquiry under order XXXII, rule 15, without any inquiry at all made by the court such as is required by law. This is in effect "an abuse of the process of the court". It was contended before us that if a court decided a question of limitation against one of the parties, our decision to interfere in a case like this would open the door to the party adversely affected to come to this Court and urge that he could establish the other view and ask this Court to exercise its inherent powers. That is a wholly different case. In such a case the court would have committed no abuse of process but would have merely exercised its judicial discretion wrongly. We think, therefore, that this is a case in which we should interfere.

Setting aside, therefore, the order of the learned Subordinate Judge dismissing the application, we direct him to re-admit the application for hearing and to decide it in accordance with the law. The case will be taken up by the learned Subordinate Judge from the stage at which it had arrived immediately prior to his delivering the order dismissing the application. If the parties are able to arrive at an agreement as to reading in this matter the evidence taken before the learned District Judge, with any further cross-examination or evidence which may be

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necessary, it may be a wise course and may expedite the settlement of the matter and permit of a speedy hearing of the suit.

Order set aside.

APPELLATE CIVIL.

Before Mr. Justice Ashworth and Mr. Justice Kendall.

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KOKA AND ANOTHER (DEFENDANTS) *v.* CHUNNI (PLAINTIFF).*

Act (Local) No. II of 1901 *(Agra Tenancy Act), section* 165*—Lambardar and co-sharer—Suit by lambardar against co-sharer for profits of* sir *or* khudkasht *in excess of his share.*

A lambardar cannot sue as lambardar one or more co-sharers for any sum due from them by reason of their holding as *sir* or *khudkasht* excess land. *Bishambhar Nath* v. *Bhullo* (1), followed. *Ganga Singh* v. *Ram Sarup* (2), dissented from. *Kundan Lal* v. *Basant Rai* (3), referred to.

A suit under section 165 of the Tenancy Act must be one for accounts primarily and it must be shown by figures that the other co-sharers have no claim to the excess which the particular co-sharer, who is plaintiff, is claiming. The fact that the plaintiff may have paid off another co-sharer out of his own pocket will not give the plaintiff a right to recover the money so paid from a third co-sharer.

THE facts of this case sufficiently appear from the judgement of the Court.

Munshi *Narain Prasad Asthana*, for the appellants.

Dr. *N. C. Vaish*, for the respondent.

ASHWORTH and KENDALL, JJ. :—This second appeal which came up before a single Judge of this Court has been referred to a Bench of two Judges on account of

*Second Appeal No. 464 of 1925, from a decree of A. G. P. Pullan, District Judge of Agra, dated the 26th of November, 1924, confirming a decree of Mahesh Bal Dikshit, Assistant Collector, first class of Agra, dated the 24th of March, 1924.

(1) (1911) I.L.R., 34 All., 98. (2) (1916) I.L.R., 38 All., 223.
(3) (1923) 75 Indian Cases, 330.