REVISIONAL CIVIL.

Before Mr. Justice Dalal.

1928 July, 17.

EMPEROR THROUGH DISTRICT MAGISTRATE OF ETAWAH (APPLICANT) *v.* BIHARI LAL (OPPOSITE PARTY).*

Civil Procedure Code, section 115—*Revision—Practice—Where other remedy available—Criminal Procedure Code, section* 476—*Costs.*

There is no invariable rule of the High Court under which an application for revision under section 115 of the Code of Civil Procedure should be refused where any other remedy is open, excepting, of course, in cases where an appeal lies to the High Court.

A civil court taking proceedings under section 476 of the Code of Criminal Procedure would have jurisdiction to award costs to one or the other party in a case where the parties to such proceedings are the same as those in the civil litigation. It has no jurisdiction to award costs of such proceedings against a District Magistrate on whose application, drawing the attention of the court to the production of a seemingly forged document in a suit in that court, the proceedings were started, but who was not a party to the suit itself.

Ganga Charan v. *Baddel* (1) and *Debi Das* v. *Ejaz Husain* (2), referred to.

THE facts of the case fully appear from the judgement of the Court.

The Government Advocate (Pandit *Uma Shankar Bajpai*), for the applicant.

Munshi *Baleshwari Prasad*, for the opposite party.

DALAL, J. :—One Bihari Lal sued Dwarka Prasad in the Munsif's court at Etawah by suit No. 478 of 1925. The dispute was about some land within the Municipality, and the defendant filed a plan of the

*Civil Revision No. 154 of 1928.

(1) (1913) 19 Indian Cases, 736. (2) (1905) I. L. R., 28 All., 72.

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Municipality of date 1922, showing that his brother Thakur Das was in possession of a certain plot of land. The plaintiff Bihari Lal filed another copy in which the words added were that it was land of Musammat Gobindi. The suit was dismissed in default of parties. The District Magistrate naturally held an inquiry on hearing that two different copies of the same document were given to two parties by the Municipality. He came to the conclusion that the copy filed by Bihari Lal was a forgery. He thereupon drew the attention of the Government, who directed him to inform the court concerned of his suspicion. He did so by a petition, dated the 14th of July, 1927, in which he narrated the facts and informed the court that the Local Government had directed him to draw the attention of the original civil court to the suspicion of forgery. I think that the Collector and District Magistrate would have been better advised if he had written an official letter instead of putting in a stamped application. Possibly he was badly advised by the local Crown Officers of law. The District Magistrate was no party to the suit, and drew the attention of the court as he had reason to suspect that a crime had been committed. The Munsif held an inquiry and wrote a judgement in which he has not the courage to record any conviction as to whether the document was really a forgery or not. He ends up in doubt and therefore refuses to order prosecution. He dismissed the application of the District Magistrate nad awarded costs against the District Magistrate.

The District Magistrate has come here in revision. It may be noted that in the decree the costs are awarded against the King-Emperor through the District Magistrate of Etawah and not against the District Magistrate by name.

The first question raised on behalf of the respondent was that no application in revision would lie. This

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objection is not warranted by the words of section 115 of the Code of Civil Procedure, which are :—"The High Court may call for the record of any case which has been decided by any court subordinate to such High Court in which no appeal lies thereto." An application in revision is barred only in those cases in which an appeal lies to this Court. In the present case an appeal lay to the court of the Subordinate Judge or District Judge. It was argued that there has been a practice in this Court not to permit revision when any other remedy is opened to the applicant in revision. A single Judge case, *Ganga Charan* v. *Baddel* (1) was quoted. No reasons are given by the learned Judge for his opinion. As regards long standing practice there is a judgement of another single Judge in *Debi Das* v. *Ejaz Husain* (2), in which it was held that the High Court is competent to call for the record of a civil case and pass such orders as it thinks fit, and the exercise of its powers of revision on the civil side will not invariably be confined to matters in respect of which no other remedy is open to the party aggrieved. The learned Judge observed in this matter : "It is next urged that this Court cannot interfere, inasmuch as there is another remedy which the opposite party can avail themselves of. . . . . .Ordinarily, I am prepared to subscribe to that, but in this matter each case must be judged upon the circumstances peculiar to it." There is no invariable rule of this Court under which an application for revision would be refused where any other remedy is open. Of course, as I have already observed, the provisions of the law are to be followed, and in cases where an appeal lies to this Court a revision would not lie.

The next question is whether the court had jurisdiction to award costs against the King-Emperor acting through the District Magistrate * * * In my opinion

(1) (1913) 19 Indian Cases, 736. (2) (1905) I. L. R., 28 All., 72.

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the Munsif had no jurisdiction. The Government was not a party to the litigation, and was not acting in any personal capacity. If the court did not desire, it was not bound to hold any inquiry. It was for the benefit of the Court itself, where no forged documents should be presented, that an inquiry was rendered necessary. It is true that in proceedings under section 476 of the Code of Criminal Procedure where the Munsif takes action he acts as a civil court. At the same time there is no provision in chapter XXXV of the Code of Criminal Procedure as to the grant of costs to any party. Under these circumstances the civil court would have jurisdiction to award costs to one or the other party in a case where the parties were the same as those in the civil litigation In the present case, as already pointed out, neither the King-Emperor nor the District Magistrate by himself was a party in the civil litigation, and therefore the Munsif had no jurisdiction to award costs in the proceedings under section 476.

In the result I set aside the order of the Munsif as regards costs in his order dated the 5th of March, 1928. I make no order as to costs here.

APPELLATE CIVIL.

Before Mr. Justice Sulaiman, Acting Chief Justice, and Mr. Justice Kendall.

BAIKUNTH NATH AND OTHERS (PLAINTIFFS) *v.* JAI KISHUN (DEFENDANT).*

1928 *July*, 19.

Hindu law—Hindu widow purchasing property—Accretion to husband's estate or stridhan*—Burden of proof—Presumption.*

There is no presumption in law that the money with which a Hindu widow in possession of her husband's estate makes a purchase of property came out of the savings from her husband's estate. The burden is on the reversioner who, after the death of the widow, claims to recover such property

*First Appeal No. 524 of 1924, from a decree of Man Mohan Sanyal, Subordinate Judge of Benares, dated the 4th of September, 1924.