suit to be transferred to the court of the Munsif of Bansi or such other court as may have jurisdiction over the subject matter, having regard to the principle laid down in the above judgments. If the Additional District Judge finds that he has no jurisdiction to transfer the case, he will obtain an order from the District Judge at Gorakhpur for the transfer of the case to the proper court. We direct that the costs here and hitherto shall abide the result.

Before Sir Shah Muhammad Sulaiman, Acting Chief Justice, Mr. Justice Mukerji and Mr. Justice Boys.

LILA (OBJECTOR) *v.* MAHANGE (APPLICANT).* 1931 *July*, 10.

Civil Procedure Code, section 115—*Revision—Other remedy available—Practice—Succession Act* (XXXIX *of* 1925), *sections* 193, 195—*Appointment of curator—Order failing to set forth grounds—Irregularity.*

Section 115 of the Civil Procedure Code is no doubt discretionary and therefore it is open to the High Court to decline to interfere in particular cases. As a matter of practice, ordinarily the High Court would not interfere if another convenient remedy is open to an applicant, particularly when that remedy is by way of appeal to a lower court. But it cannot be laid down as a general proposition that the High Court has no power of interference at all or should not interfere where there is another remedy by way of a suit open to the applicant. The remedy by way of a separate suit would involve a protracted litigation and is not always a convenient remedy. Each case must be considered on its own merits and if the court below has acted without jurisdiction or with material irregularity and the applicant has been seriously prejudiced and interference is called for in the interests of justice, there is no reason why the applicant for revision should be driven to a more circuitous remedy by way of a separate suit.

Where an order for the appointment of a curator under section 195 of the Succession Act was passed after the applicant was examined and there were materials before the District Judge on which he could be satisfied as to the existence of the conditions required by sections 193 and 195, but the order did not specifically set forth the grounds on which he

*Civil Revision No. 309 of 1930.

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was satisfied that it was necessary and proper to appoint a curator, it was *held* that as the section did not in express terms require that he should record such grounds or clear findings, although ordinarily it was expected that he should do so, the order was only irregular and not illegal and should not be interfered with in revision.

The case was referred to a Full Bench with the following referring order :—

SULAIMAN, A. C. J. and SEN, J. :—This is a civil revision from an order of the District Judge of Shahjahanpur dismissing the applicant's objection to an order passed by him under section 195 of the Indian Succession Act. The learned Judge admits that in his order there was no mention of the points referred to in section 193 of the Act and it also appears that there were no clear findings on the point as referred to in section 193 and section 195. The learned Judge is inclined to think that the very fact that he passed the order under section 195 showed that he had satisfied himself of the necessary requisites.

The applicant comes up in revision to the High Court and urges that without the proper inquiry and without the necessary findings the order of the District Judge was without jurisdiction and that, in any case, it was illegal or, at any rate, there was a material irregularity in the procedure.

A preliminary objection is taken on behalf of the respondents that no revision lies inasmuch as another remedy is open to the applicant. Reliance is placed on a number of cases of this Court relating to revisions from orders passed under section 9 of the Specific Relief Act and it is urged that the same analogy applies. See *Jwala* v. *Ganga Prasad* (1) and *Ram Kishan Das* v. *Jai Kishan Das* (2). See also *Sher Ali* v. *Jagmohan Ram* (3). It is further pointed out that section 209 of the Act makes the order of the District Judge final, and it is urged that it implies that it should not be interfered with in revision. Certain other cases also are cited to the effect that no revision at all lies when another remedy is open to the aggrieved party.

The learned advocate for the applicant urges that if the order of the court below is without jurisdiction or illegal the court should set it aside even though a more inconvenient and circuitous remedy may be open to his client. He relies on

(1) (1908) 5 A.L.J., 297. (2) (1911) 8 A.L.J., 791.
(3) (1930) I.L.R., 53 All., 466.

several cases of the Madras High Court, *Kothandarama Reddy* v. *Jagathambal Ammal* (1), *Papamma* v. *The Collector of Godavari* (2) and *Abdul Rahiman* v. *Kutti Ahmed* (3) and a case of the Bombay High Court, *Haji Mahamadbhai* v. *Bai Havabai* (4) in support of the contention that the order was without jurisdiction.

It is further urged that even if no revision lies to the High Court, the High Court can in the exercise of its inherent jurisdiction interfere with the order of the court below in the ends of justice. Reliance is placed on the cases, *Harnand Lal* v. *Chaturbhuj* (5) and *Chaturbhuj* v. *Harnand Lal* (6). In reply it is suggested that the inherent jurisdiction would be confined to matters of which a superior court is actually seised and not to matters which have been disposed of by subordinate courts from which no appeal or revision lies.

As this application raises questions of law on which authoritative pronouncements are called for, we direct that this case should be laid before the CHIEF JUSTICE for the constitution of a larger Bench.

Mr. *Krishna Murari Lal*, for the applicant.

Messrs. *Shiva Prasad Sinha* and *M. A. Aziz*, for the opposite parties.

SULAIMAN, A. C. J., MUKERJI and BOYS, JJ. :— This is an application in revision from an order dismissing the objection of Lila to the appointment of a curator under section 195 of the Indian Succession Act No. XXXIX of 1925.

A preliminary objection is taken to the hearing of this revision on the ground that there is another remedy, by way of a separate suit, open to the applicant and that therefore this Court should not entertain the revision at all. The learned advocate for the respondent has relied on some cases in which the High Court declined to interfere because there was another remedy open. In one recent case it was also remarked that the High Court's

(1) (1922) 71 Indian Cases, 32.
(2) (1889) I.L.R., 12 Mad., 341.
(3) (1886) I.L.R., 10 Mad., 63.
(4) A.I.R., 1924 Bom., 507.
(5) (1926) I.L.R., 48 All., 356.
(6) (1927) I.L.R., 50 All., 335.

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power to interfere in revision was dependent on the fulfilment of the condition that no other remedy by suit, appeal or application was open; vide *Sher Ali* v. *Jagmohan Ram* (1).

Section 115 is no doubt discretionary and therefore it is open to the High Court to decline to interfere in particular cases. As a matter of practice it may be conceded that ordinarily the High Court would not interfere if another convenient remedy is open to an applicant, particularly when that remedy is by way of appeal to a lower court. But it cannot be laid down as a general proposition that the High Court has no power of interference at all or should not interfere where there is another remedy by way of a suit open to the applicant. The remedy by way of a separate suit would involve a protracted litigation through several courts and is not always a convenient remedy when more effective and speedy remedy is available. There is no justification for restricting the power conferred upon the High Court under section 115 by laying down that no revision should be entertained when a remedy by suit lies. Each case must be considered on its own merits and if the court below has acted without jurisdiction or with material irregularity and the applicant has been seriously prejudiced and interference is called for in the interests of justice, there is no reason why we should drive the applicant to a more circuitous remedy by way of a separate suit. We accordingly overrule the preliminary objection.

On the 9th of April, 1930, Mahange filed an application under section 192 of the Succession Act claiming to be the nephew of the deceased Khayali, whose assets according to him had been wrongly taken possession of by Lila, and asking for being put in possession. He also filed another application praying that a curator might be appointed for the making of an inventory. The learned District Judge ordered notice to issue on the first application and directed that the second application

(1) (1930) I.L.R., 53 All., 166.

should be put up for hearing on the 11th of April, 1930, on which date the applicant was to be examined. He fixed the 17th of May, 1930, for the appearance of Lila.

On the 11th of April, 1930, the applicant was examined, and he stated that he was the heir of the deceased who left assets which had been taken possession of by the opposite party and that the assets included crops which were likely to be misappropriated by Lila. The learned Judge ordered that a curator should be appointed who should go and take possession of the property. This was done.

On the 17th of May, 1930, the objector appeared but the case was postponed to the 20th of May, 1930, on which date he filed his objections urging *inter alia* that the court had no jurisdiction to interfere, as the court was not competent to try the suit, and there was no compliance with the provisions of the Act. This objection has been dismissed.

It has to be conceded that the procedure adopted by the District Judge, so far as the order issuing notice was concerned, was irregular, as section 193 requires that the applicant should be examined on oath in the first place and further inquiry if necessary may be had and the Judge is to be satisfied as to the existence of conditions mentioned in section 193 before issuing notice. The learned Judge, however, did ultimately examine the applicant. We are not dealing with any order passed for the appointment of an officer to take an inventory of assets under section 194 of the Act, but with the order of the appointment of a curator under section 195. The curator may be appointed even before the issue of the notice under section 194, and, indeed, in some cases it may be absolutely necessary to appoint a curator before the opposite party has had time to remove the assets. This order was passed after the applicant had been examined and there were materials before the District

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Judge on which he could be satisfied as to the conditions required by sections 193 and 195. No doubt the order passed by him on the 11th of April, 1930, merely stated that in his opinion it was necessary to appoint a curator and did not specifically set forth the grounds on which he was so satisfied. The learned Judge has made it clear by his subsequent order that he was satisfied by the evidence of the applicant as to all the grounds. Ordinarily it is expected that the District Judge would clearly state that he is satisfied as regards the requisites, but an omission to do so would not make the order illegal because the section does not in express terms require that he should record such clear findings. All that is necessary is that he should be satisfied as to the existence of those conditions. We think that although there was some irregularity in the procedure adopted by the learned Judge it was cured before the order for the appointment of the curator was passed and that therefore the order is in no way illegal.

It is not necessary for us to consider whether independently of section 115 there is any inherent jurisdiction in the High Court to interfere with the orders passed by subordinate courts.

We accordingly dismiss the application with costs.