1933

LALLU SINGH v. CHANDRA SEN

(1) On what date or dates did Lallu Singh pay the land revenue in respect of which he obtained the decree against Lakshmi Kunwar? If he paid any of the items, which go to make up the decretal amount, in the agricultural year 1334 Fasli, what is the amount or total amount of the sum or sums so paid?

(2) Whether the transfer in favour of the plaintiff is a fraudulent one, having been made with intent to defeat or delay the creditors of Lakshmi Kunwar?

As the issue No. 2 to be remitted was not raised in its clear form in the court of first instance and as no issue like the issue No. 1 was framed in the court below, we allow the parties to adduce fresh evidence.

PRIVY COUNCIL

J. C.* 1934 *July*, 20

BISHESHWAR PRATAP SAHI, SINCE DECEASED, AND ANOTHER *v.* PARATH NATH AND ANOTHER

[On appeal from the High Court at Allahabad.]

Civil Procedure Code, section 114; *order XLVII, rule* 1(1)—*Review of judgment—Jurisdiction—Claim based on Hindu widow's deed of relinquishment—Dismissal of claim—Death of widow—Plaintiffs next reversioners.*

The jurisdiction which a court has under section 114 of the Code of Civil Procedure, 1908, to review its judgment can be exercised only upon the grounds for an application for a review stated in order XLVII, rule 1(1), and the words therein "or for any other sufficient reason" mean a reason sufficient on grounds at least analogous to those specifically stated in the rule.

Plaintiffs sued for a declaration that they were entitled to property under a deed of relinquishment executed by a Hindu widow, and that an attachment of part of the property in execution of a money decree against her was invalid. The Subordinate Judge dismissed the suit, on the ground that the deed was fraudulent and invalid. On the day before, or the day upon which, he delivered judgment the widow died. Upon the plaintiffs' application the Subordinate Judge reviewed

**Present*: Lord RUSSELL of KILLOWEN, Sir LANCELOT SANDERSON, and Sir SHADI LAL.

his judgment and decreed the plaintiffs' claim, on the ground that they had become owners of the property by inheritance.

Held, that the decree was invalid, because the plaintiffs' claim was under the deed and not as reversioners, and because the Subordinate Judge, for reasons stated above, had no jurisdiction to review his judgment.

Chhajju Ram v. *Neki* (1), followed.

Decree of the High Court reversed.

APPEAL (No. 118 of 1931) from a decree of the High Court (April 30, 1930), affirming a decree of the Subordinate Judge, Benares (November 30, 1925).

On December 10, 1923, a money decree was obtained against a Hindu widow, who was in possession of her deceased husband's property as heir to his deceased son; part of the property was attached in execution of the decree. The respondents instituted a suit against the decree-holder (now represented by the appellants) claiming a declaration that they were entitled to the whole property under a deed of relinquishment executed by the widow two days after the decree was obtained, and that the attachment was invalid.

The facts appear more fully from the judgment of the Judicial Committee.

The Subordinate Judge dismissed the suit on the ground that the deed was fraudulent and invalid. On the day before, or the day upon which, he delivered judgment the widow died. Upon an application by the plaintiffs under section 114 and order XLVII, rule 1 of the Code of Civil Procedure, 1908, the Subordinate Judge reviewed his judgment, and decreed the plaintiffs' claim upon the ground that they had become entitled by inheritance.

An appeal to the High Court was dismissed. The learned Judges (BANERJI and KING, JJ.), following *Kallu* v. *Faiyaz Ali Khan* (2), rejected a contention that as the decree was in respect of money borrowed by the widow for legal necessity it was binding upon the property in the hands of the respondents. The question whether

(1) (1922) I.L.R., 3 Lah., 127. (2) (1908) I.L.R., 30 All., 394.

1934

BISHESHWAR PRATAP SAHI v. PARATH NATH

the Subordinate Judge had power to review his judgment was not dealt with.

1934. June 26, 28. *Wallach,* for the appellant: It is contended (1) that the decree, being for money borrowed by the widow for legal necessity, was binding upon the respondents as reversioners, and could be executed after her death by attachment of property of her deceased husband; (2) that the respondents' claim failed because it was based upon the invalid deed of relinquishment, and the Subordinate Judge had no jurisdiction to review his judgment.

[After the first contention had been partially argued and reference made to various cases their Lordships desired that the second contention should be dealt with first.]

The jurisdiction to review is limited by order XLVII, rule 1(1) and the general words "or for any other sufficient reason" are to be read according to the *ejusdem generis* rule as meaning a sufficient reason analogous to those specifically stated: *Chhajju Ram* v. *Neki* (1). There was no such reason in the present case. Although this contention is not referred to in the judgment of the High Court, it was raised in terms by the fifth ground in the memorandum of appeal.

Narisimham, for the respondents: There is no indication that the contention as to the jurisdiction of the Subordinate Judge was put forward in the High Court, and it should be taken as having been abandoned. It is not in terms raised by appellants' reasons. In these circumstances the appellants should not now be permitted to rely upon it. Had it been successfully raised at an earlier stage the respondents could have appealed from the original decree.

July 20. The judgment of their Lordships was delivered by Sir LANCELOT SANDERSON:

This is an appeal from a decree of the High Court of Judicature at Allahabad, dated the 30th April, 1930,

(1) (1922) I.L.R., 3 Lah., 127.

which affirmed a decree of the Subordinate Judge of Benares, dated the 30th November, 1925.

The appellants are the heirs and legal representatives of Musammat Dulhin Radha Dulari Kunwar, hereinafter called Musammat Dulhin, who was the first defendant in the suit. She died in June, 1927, and the names of her legal representatives were placed on the record in her place in May, 1928.

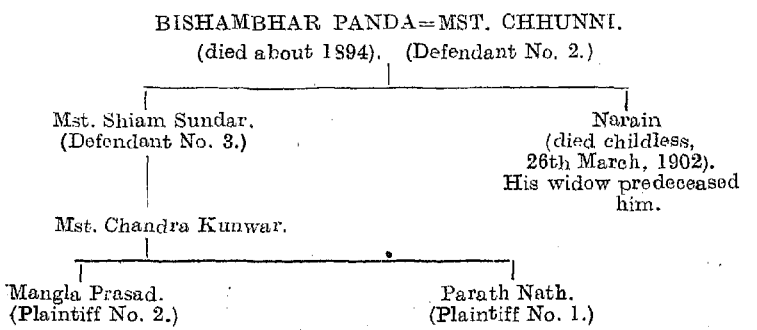
The suit was brought on the 25th February, 1924, by the plaintiffs respondents, both of whom were minors, against (1) the said Musammat Dulhin; (2) Musammat Chhunni, and (3) Musammat Shiam Sundar. The plaintiffs prayed for the following relief:

(*a*) It may be declared by the court that the plaintiffs are the owners of the property, detailed below, under a deed of relinquishment executed by Musammat Chhunni in favour of the plaintiffs, dated the 14th December, 1923, and that it is by no means fit to be attached and sold by auction in execution of decree passed by the Subordinate Judge of Benares in case No. 129 of 1923—Dulhin Radha Dulari Kunwar, plaintiff *vs.* Musammat Chhunni and others, defendants—Laid at Rs.7,787-10.

(*b*) All the costs of the suit may be charged to defendant No. 1.

(*c*) In addition to or in place of the relief aforesaid any other relief to which the plaintiffs may be found entitled in the opinion of the court may be granted to the plaintiffs.

The following pedigree shows the relationship of the plaintiffs and the second and third defendants:



The following are the material facts: Bishambhar Panda died while the Hindu family was joint, and

1934

BISHESHWAR PRATAP SAHI v. PARATH NATH

according to the principle of survivorship Narain Panda, his son, succeeded to and went into possession of his father's property, which is specified in the plaint. Narain died childless on the 26th March, 1902, his widow having predeceased him, and thereupon his mother Musammat Chhunni went into possession of the said property with the limited interest of a Hindu widow.

On the 22nd of September, 1910, Musammat Chhunni and Musammat Shiam Sundar executed what purported to be a simple mortgage deed of four houses therein described in favour of Musammat Dulhin to secure the sum of Rs.2,635-10 and interest.

It was therein stated that the borrowing was for legal necessity; the greater part of the money being required to pay off a previous mortgage and certain promissory notes.

Musammat Dulhin, the first defendant in the present suit, instituted a suit on the said mortgage against Musammat Chhunni and Musammat Shiam Sundar, the 2nd and 3rd defendants in the present suit, and judgment therein was given by the Subordinate Judge of Benares on the 12th of December, 1923.

The learned Judge held that the above-mentioned document of the 22nd September, 1910, had not been proved as a mortgage bond, and that therefore no decree for sale could be given, but he was of opinion that Musammat Dulhin was entitled to a simple money decree. He therefore made a money decree in her favour with costs and the usual future interest.

Two days after this decree, viz. on the 14th December, 1923, Musammat Chhunni executed a deed of relinquishment of the entire property of which she was in possession, including the property covered by the deed of the 22nd September, 1910, in favour of Parath Nath and Mangla Prasad, the minor sons of Suraj Prasad Shukul, who are the plaintiffs in this present suit. Suraj Prasad Shukul was the husband of Musammat Chandra Kunwar, and at the time of the deed of relinquishment Mangla

Prasad was aged about eight years, and Parath Nath a few months only.

On the 19th of December, 1923, Musammat Dulhin, in execution of her decree of the 12th of December, 1923, attached the property, which is now in dispute. In January, 1924, an application was made on behalf of the plaintiffs in the present suit to set aside the attachment. This application was refused on the 26th January, 1924. Consequently, on the 25th February, 1924, the plaintiffs instituted the present suit, the parties to which and the prayers in which have already been stated.

The suit was based upon the said deed of relinquishment of the 14th December, 1923, executed by Musammat Chhunni, by reason of which it was alleged the plaintiffs had become absolute owners in possession of the said property. It was alleged in the plaint that Musammat Shiam Sundar never had any title to the property in question.

The first defendant in the present suit, viz. Musammat Dulhin defended the suit. In her written statement she alleged, among other matters, that the said deed of relinquishment of the 14th December, 1923, was without consideration, that it was fraudulent, null and void, and that it was contrary to the provisions of sections 52 and 53 of the Transfer of Property Act.

The Subordinate Judge, who tried the suit, by his judgment delivered on the 22nd of December, 1924, held that the said deed was on the face of it fictitious and fraudulent, and could not save the property from being attached and sold, that the doctrine of *lis pendens* applied to the said deed, inasmuch as Musammat Dulhin, not being satisfied with the money decree, had appealed against it, and the appeal was still pending, and the said deed therefore was bad and void. The Subordinate Judge therefore dismissed the suit with costs.

It appears that on the day before, or on the day on which, the Subordinate Judge delivered judgment,

1934

BISHESHWAR PRATAP SAHI v. PARATH NATH

Musammat Chhunni died, and on the 16th January, 1925, the plaintiffs applied to the Subordinate Judge under section 114 of the Civil Procedure Code and order XLVII, rule 1 of the schedule to the said Code for a review of the decree and judgment of the 22nd of December, 1924. The main ground of the application was that Musammat Chhunni had no more than a life interest in the said property, that on her death the question of the validity of the deed of relinquishment became immaterial, that her life interest vanished with her death, and that the plaintiffs were entitled to a declaration that the properties in suit belonged to the plaintiffs at the date of the said judgment and were not liable to be sold in execution of the decree held by Musammat Dulhin against Musammat Chhunni and Musammat Shiam Sundar.

On the 30th November, 1925, the Subordinate Judge acceded to this application and reviewed his judgment and decree. The following is a material passage from his judgment:

"Under my former judgment only the life interest of Musammat Chhunni was attached and was to be sold. But with her death she ceased to have any interest in the property, which, by inheritance, goes to and becomes the property of the plaintiffs and so after the death of Chhunni the plaintiffs are the full owners of the property by inheritance and not under the deed of surrender of 14th December, 1923, and thus the property cannot now be sold in execution of a personal decree against Chhunni."

He therefore directed that the claim of the plaintiffs should be decreed, but ordered that the plaintiffs should pay the costs of the first defendant, viz. Musammat Dulhin.

It is to be noted that in any event the decree so made was not correct, because as already stated the plaintiffs' claim in the plaint was that they were owners of the property in suit by reason of the deed of relinquishment, and they prayed for a declaration to that effect. The learned Judge held that this claim could not be

supported, yet the order made by him was that the claim of the plaintiffs should be decreed. It does not appear that the question whether the Subordinate Judge, under the provisions of order XLVII, rule 1, had any right to review his judgment and decree on the above-mentioned grounds, was raised on the hearing of the application for review.

Musammat Dulhin appealed to the High Court, and one of the grounds of appeal was that the suit was rightly dismissed and that the Subordinate Judge acted erroneously in reviewing his judgment. Judgment in the appeal was delivered on the 30th of April, 1930. The learned Judges dealt with the question whether Musammat Dulhin, having obtained a money decree only against Musammat Chhunni, could proceed in execution against the properties in suit which had come into the possession of the plaintiffs as the next reversioners on the death of Musammat Chhunni. They decided against the appellant on that question and dismissed the appeal with costs. There is nothing in the judgment to indicate that the above-mentioned question whether the Subordinate Judge had any right to review the judgment and decree of the 22nd of December, 1924, was argued in the High Court.

It appears that Musammat Dulhin died during the pending of the appeal to the High Court, and by order of the Court, Bisheshwar Pratap Sahi and Nameshwar Pratap Sahi were added as parties in her place. The two last-mentioned persons, as already stated, appealed to His Majesty in Council against the above-mentioned judgment and decree of the High Court.

One of the grounds of appeal was that the plaintiffs' suit was based on their title under the deed of relinquishment, dated the 14th of December, 1923, and should have been dismissed in any event.

It was argued on behalf of the appellants that under the provisions of section 114 of the Code of Civil Procedure and of order XLVII, rule 1, the Subordinate

1934

BISHESHWAR PRATAP SAHI v. PARATH NATH

Judge had no right to review his judgment and decree on the above-mentioned grounds. As already stated, the appellants do not seem to have insisted upon this point in the Courts in India, although it was included in the memorandum of appeal to the High Court In spite of this their Lordships are of opinion that they are bound to consider the question which has been clearly raised in the appeal to His Majesty in Council. It is a pure question of law, and no new evidence is necessary to enable their Lordships to dispose of the matter.

Section 114 of the Code of Civil Procedure, 1908, is the "Review" section, and is as follows:

"114. Subject as aforesaid, any person considering himself aggrieved—

(*a*) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred;

(*b*) by a decree or order from which no appeal is allowed by this Code; or

(*c*) by a decision on a reference from a court of small causes,

may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit."

This section has to be read with order XLVII, rule 1 of the first schedule of the Code, inasmuch as the Code provides that the rules in the first schedule shall have effect as if enacted in the body of the Code until annulled or altered in accordance with the provisions of the Code.

Order XLVII, rule 1(1) prescribes the grounds upon which an application for review may be made; and unless this case can be shown to be within the terms of this rule, the review ought not to have been granted. The provisions of the rule are as follows:

"1. (1) Any person considering himself aggrieved—

(*a*) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred;

(*b*) by a decree or order from which no appeal is allowed; or

(*c*) by a decision on a reference from a court of small causes;

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the

time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order."

In considering this question, it is necessary to remember the ground on which the review was granted. A passage in the Subordinate Judge's judgment states the ground shortly and clearly; it is as follows: "But it so happened that Chhunni died just on the day when I delivered judgment or a day before, and on that ground the plaintiffs applied for a review of judgment and their application was granted."

It is obvious that the above-mentioned ground is not one of the grounds specified in order XLVII, rule 1(1) and the application for review can only be supported, if at all, by reference to the words "or for any other sufficient reason." These words are of a general character, and apart from authority would seem to leave the sufficiency of the reason to the unfettered discretion of the court. But there is authority to the contrary, and it has been held that a limited meaning must be put upon the above-mentioned words.

In *Chajju Ram* v. *Neki* (1) it was decided by the Judicial Committee that a court hearing an application for the review of a decree on appeal had no jurisdiction to order a review because it was of opinion that a different conclusion of law should have been arrived at and it was held that rule 1 of order XLVII must be read as in itself definitive of the limits within which review is permitted, and that the words "any other sufficient reason" must be taken as meaning "a reason sufficient on grounds at least analogous to those specified immediately previously."

In their Lordships' opinion the above-mentioned ground stated by the Subordinate Judge, as the only ground for the application for review, cannot possibly

(1) (1922) I.L.R., 3 Lah., 127.

1934

BISHESHWAR PRATAP SAHI v. PARATH NATH

be said to be in any way analogous to the grounds specified in the rule. Indeed, it was not seriously contended before their Lordships on behalf of the respondents that the application for review was properly granted.

It was urged that if the application for review had been refused the respondents could have appealed from the Subordinate Judge's judgment of the 22nd December, 1924. Their Lordships express no opinion on this question, or upon the question which was raised during the argument whether the respondents still have a right of appeal; they merely point out that if their right of appeal has been lost, as to which they express no opinion, it was due to their own action in making an application for review, which cannot be supported.

Their Lordships are therefore of opinion that the application for review should not have been granted, and in view of this decision it is not necessary or desirable for their Lordships to express any opinion upon the questions raised in the judgment of the High Court which form the basis of the grounds of appeal Nos. 1 to 4 in the appeal to His Majesty in Council.

This appeal, therefore, must be allowed on the ground that the Subordinate Judge had no jurisdiction to grant the review. The result is that the Subordinate Judge's judgment of the 30th November, 1925, by which he granted the application for review, and made a decree in the plaintiffs respondents' favour, must be set aside except in so far as it relates to the costs of the defendant No. 1, and the judgment and decree of the High Court dated the 30th April, 1930, which affirmed that judgment and decree of the Subordinate Judge must also be set aside. The original judgment of the Subordinate Judge dated the 22nd of December, 1924, must be restored.

By reason of the fact that the ground on which the appeal to His Majesty in Council is allowed apparently was not relied upon in the High Court, their Lordships

are of opinion that there should be no order as to the costs in the High Court and of this appeal.

Their Lordships will humbly advise His Majesty accordingly.

Solicitors for appellants: *Hy. S. L. Polak & Co.*

Solicitor for respondents: *G. K. Kannepalli.*

PRIVY COUNCIL

SHEO SWARUP AND OTHERS *v.* KING-EMPEROR

J. C.* 1934 *July*, 26

[On appeal from the High Court at Allahabad.]

Criminal Procedure Code, sections 417, 418, 423—*Appeal to High Court—Appeal from acquittal—Sessions Judge without jury—Questions of fact—Jurisdiction on appeal.*

Upon an appeal to the High Court under section 417 of the Code of Criminal Procedure from an order of acquittal made by a Sessions Judge, sitting without a jury but with assessors, sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code, and before reaching its conclusions upon fact, the High Court should, and will, always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should, and will, act in accordance with rules and principles well known and recognized in the administration of justice.

Views expressed by certain High Courts upon the jurisdiction in appeals of the above nature, disapproved.

Judgment of the High Court, I. L. R., 55 All., 689, affirmed.

**Present:* Lord BLANESBURGH, Lord THANKERTON, Lord RUSSELL of KILLOWEN, Sir JOHN WALLIS and Sir SHADI LAL.