Before Sir Shah Muhammad Sulaiman, Chief Justice, Justice Sir Lal Gopal Mukerji, and Mr. Justice King

GUPTA AND CO. (PLAINTIFF) *v.* KIRPA RAM BROTHERS (DEFENDANT)* 1934 *February*, 20

Civil Procedure Code, section 115—"Case decided"—Order directing plaintiff to pay more court fee—Whether revision lies.

Upon a suit being filed the office reported that the court fee paid was insufficient. The court, after hearing the plaintiff's counsel, held that the amount of court fee paid was insufficient and ordered that the plaintiff should make good the deficiency. Thereupon the plaintiff filed a revision in the High Court against this order. *Held*—

No revision lies from an order holding that the court fee paid on a plaint is insufficient and directing him to make good the deficiency. A mere decision as to the amount of the court fee payable does not amount to a "case decided" within the meaning of section 115 of the Civil Procedure Code, nor is it necessarily an irregularity in procedure or an illegality or a refusal to exercise jurisdiction.

The phrase "case decided" indicates that what has been decided is something complete in itself so that it may be separated and looked upon as a matter independent of the suit. Where there is a proceeding which can be considered separate and distinct and is finally disposed of by an order which terminates it, it may be considered to be a "case decided". Here the decision was analogous to the decision of an issue of law arising in a pending suit, and as such it was not a case decided.

Further, the court had jurisdiction to decide this point, and even an erroneous decision of the point of law would not furnish a ground for a revision.

Mr. *J. Swarup*, for the applicant.

Mr. *S. N. Seth*, for the opposite party.

SULAIMAN, C. J.:—This case has been referred to a Full Bench because of a conflict of opinion in this Court. The applicant firm was the plaintiff in the court of the Munsif of Agra in a suit brought to get a previous decree set aside. On a report made by the office that the court fee paid by the plaintiff was insufficient, the court, having heard the plaintiff's counsel,

*Civil Revision No. 293 of 1933.

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held that the amount of the court fee paid was insufficient and ordered that the plaintiff should make good the deficiency. Instead of either paying the balance of the court fee or allowing the plaint to be rejected and then appealing from the order, the plaintiff filed an application in revision from the order of the Munsif, challenging its propriety. The main question in the case is whether a civil revision lies from such an order and can be entertained by this Court. It is not necessary to deal at length with the contention that the record having been sent for by a single Judge of this Court the question whether a case has or has not been decided must be deemed to have been set at rest and it is no longer open to the respondent's counsel to urge that this High Court has no jurisdiction to entertain a revision. Obviously, an *ex parte* order directing the record to be sent for cannot finally dispose of the question whether this Court has jurisdiction to entertain a revision, or for the matter of that whether a revision at all lies.

There are undoubtedly a large number of cases in this very Court in which opinions have been expressed either that a revision lies or that it does not lie. The cases other than those in which more court fees were demanded are not relevant. I should, however, like to consider the recent Full Bench cases of this Court in particular, so as to see whether the principles laid down therein apply to the case before us.

In *Buddhu Lal* v. *Mewa Ram* (1) it was held by the majority of the Judges that no revision would lie from a finding recorded by the court below that it had jurisdiction to entertain the suit. Where, therefore, the decision amounts to a mere finding on an issue, no revision would lie under this Full Bench ruling.

In *Ram Sarup* v. *Gaya Prasad* (2) a revision from an appellate order directing the setting aside of an *ex parte* decree when the appellate court had no power to intervene at all was allowed. But in that case the revision

(1) (1921) I.L.R., 43 All., 564 (2) (1925) I.L.R., 48 All., 175.

was from the order of the District Judge passed on appeal, before whom certainly there was a case pending which had been finally disposed of by the Judge and after such disposal no further matter remained pending before him. The order no doubt was not a decree nor even an appealable order, nevertheless it was an order which marked the complete termination of the case pending before the District Judge and was therefore considered to come within the scope of section 115 of the Civil Procedure Code. This case is an authority for the proposition that where an independent proceeding, even though not amounting to a suit, is completely disposed of, it would be a "case" decided within the meaning of the section.

In *Radha Mohan Datt* v. *Abbas Ali Biswas* (1) it was laid down that an order setting aside an *ex parte* decree was a "case decided" within the meaning of the section and that a revision would lie from such an order. Obviously when an *ex parte* decree is passed the suit for the time being is terminated and a fresh independent proceeding is started by an application under order IX, rule 13 of the Civil Procedure Code for the setting aside of such a decree. The final disposal of such an application was held in that case to amount to the decision of a "case", particularly as the propriety of that decision could not be challenged subsequently in an appeal from the decree ultimately passed in the case.

There are many other cases of this Court in which, for instance, it has been held that an application from an order dismissing an application for leave to sue *in forma pauperis* can be entertained, or that a revision would lie from an order refusing the defendant to file a written statement or refusing to hear him, or from orders superseding an arbitration or arbitrarily referring the case to arbitration. It is not necessary to consider the correctness of these rulings in this case, for they can certainly be distinguished.

(1) (1931) I.L.R., 53 All., 612.

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It is equally unnecessary to review the authorities in the other High Courts where also a certain divergence of opinion has prevailed. Broadly speaking, it may be said that, barring certain single Judge cases, which have been recently overruled by a Division Bench, the Madras High Court has been entertaining revisions from orders demanding more court fees. On the other hand, the Patna High Court has in its latest pronouncement come to the conclusion that the order amounts to the decision of an issue and no revision would lie. In Calcutta the opinion has been fluctuating, but there is a recent case in which a revision has not been entertained. The Lahore High Court has not entertained applications principally on the ground that there is another remedy open to the applicant. No case of the Bombay High Court, directly in point, has been cited before us.

The cases of our own High Court which are in point are the following:

In *Chhakkan Lal* v. *Kanhaiya Lal* (1) PIGGOTT and WALSH, JJ., held that a defendant who had been ordered to pay additional court fees on his plea of set-off could not come up in revision from the order of the court as the case was governed by the principles laid down by the Full Bench in *Buddhu Lal's* case (2). It was on this ground alone that the Bench dismissed the application.

This case does not appear to have been brought to the notice of the Bench which decided the case of *Lakshmi Narain Rai* v. *Dip Narain Rai* (3). That is a case directly in favour of the applicant and laid down that an application in revision from an order demanding court fees lay inasmuch as there was a case decided and there was failure on the part of the court to exercise jurisdiction vested in that court. This opinion was based on certain Calcutta, Madras and Patna decisions which it is not necessary to examine. As observed above, there are

(1) (1922) I.L.R., 45 All., 218. (2) (1921) I.L.R., 43 All., 564.
(3) (1932) I.L.R., 55 All., 274.

other rulings of Calcutta and Patna which lay down the contrary. Reliance, however, was placed on the case of *Jagannath Sahu* v. *Chhedi Sahu* (1), where a revision from an order appointing a new arbitrator in a wholly irregular manner was entertained. The other case relied upon, namely, *Puran Lal* v. *Rup Chand* (2), was a similar case in which the ruling of *Jagannath Sahu's* case was followed. In my separate judgment I remarked that the case of *Jagannath Sahu* was in point and as the Full Bench case of *Buddhu Lal* was not directly against that view, I was not prepared to differ from the opinion expressed by my learned colleague. In *Lakshmi Narain Rai's* case the learned Judges first considered whether the order of the court below demanding more court fees was proper and correct, and having decided that it was wrong they came to the conclusion that being what they called an erroneous order for payment of deficient court fee, the High Court could interfere because it was a case amounting to a failure to exercise a jurisdiction vested in the court. The attention of the learned Judges was drawn neither to *Chhakkan Lal's* case nor to an unreported ruling in *Saiyid Wajid Ali* v. *Kamta Prasad* (3), by PULLAN and NIAMAT-ULLAH, JJ., in which it was laid down that the court below had jurisdiction to decide whether the court fee paid on the plaint was proper or not and having arrived at the conclusion that insufficient court fee had been paid, even if this view were erroneous in law, the jurisdiction of the court to pass the order which it did was not affected.

It seems to me that it is not possible to lay down any complete and exhaustive definition of the word "case". Certainly the word "case" is not an exact equivalent of the word "suit". Obviously it is something wider. At the same time, it may not be so wide as to include every order that is passed by a court during the trial of a suit or proceeding pending before it. It cannot in my

(1) (1928) I.L.R., 51 All., 501. (2) (1931) I.L.R., 53 All., 778.
(3) Civil Revision No. 91 of 1931, decided on 20th May, 1932.

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opinion be a "case" unless it is a proceeding which can be regarded as something separate and in a sense independent from the suit under hearing, and the termination of that proceeding should be somewhat different from mere orders passed in the ordinary trial of the suit itself. Ordinarily speaking, orders passed by the same court from time to time during the trial of a suit would not be regarded as so many separate cases decided by the court, each of them being revisable under section 115 of the Civil Procedure Code. But where the case is a proceeding which can be considered separate and distinct and is finally disposed of by an order which terminates it, it may well be considered to be a "case decided" although the suit has not in one sense been completely disposed of.

There is in my opinion another aspect of the case which is also fatal to this revision. After all, the decision of the court below that more court fees are payable is a mere decision on a point of law which arose in the case and, indeed, which it was the duty of the court to decide. It cannot be seriously contended that if the deficiency in the amount of the court fees paid had not been discovered at that stage but the question had arisen on a plea taken in the written statement and an issue had been framed on that point and then the court had decided it, no revision would lie under the authority of the Full Bench ruling in *Buddhu Lal's* case (1). The position, to my mind, is very similar and, at any rate, analogous. Here the court below has decided the question of the amount of the court fees that is payable at a slightly earlier stage, but it is nevertheless a decision on one of the points that may well be in controversy. The court had jurisdiction to decide this point and if it has taken an erroneous view of the law it has committed no irregularity. I do not think that it can be said that the court below, having decided this point, is now refusing to exercise jurisdiction to entertain the suit

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

This was the basis of the decision in another unreported case, *Chaube Narain Rao* v. *Rao Bahadur Chaube Gur Narain* (1), in which BANERJI, J., and myself held that even if the court below has not taken a correct view of the law, that at most would amount to a mere error of judgment and not be any irregularity in procedure or any illegality or acting without jurisdiction so as to permit the applicant to get the order revised.

I am, therefore, of opinion that it would be in accordance with the opinions expressed generally in the Full Bench cases of this Court as well as the other cases cited above to hold that a mere decision as to the amount of the court fees payable does not amount to a "case decided" nor is it necessarily an irregularity in procedure or illegality or a refusal to exercise jurisdiction. I would, therefore, dismiss the revision with costs.

MUKERJI, J.:—After the very exhaustive judgment that has just been delivered by the CHIEF JUSTICE I do not propose to discuss most of the cases already commented on. I would just add a word or two.

Section 115 of the Civil Procedure Code gives revisional jurisdiction to the High Court in certain cases only. The High Court may exercise jurisdiction where any case has been decided. The word "case" indicates that what is meant need not be the suit or any other proceeding before the court below in its entirety. It is possible therefore that a "case" may arise during the pendency of a suit. But the word also indicates, to my mind, that what has been decided must be something complete in itself so that it may be separated and looked upon as a matter independent of the suit. I here recall what I said in a decision of mine in *Bal Krishna* v. *Ram Kishun* (2): "The court has to pass orders at every step, but every order cannot be called

(1) Civil Revision No. 268 of 1930, decided on 29th July, 1930.
(2) [1930] A.L.J., 235.

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the decision of a case. A case must be something complete in itself so that it may be treated as an independent matter." This seems to me to be the idea of the word "case" used in section 115.

Mukerji, J.

It follows that an order passed in the course of the trial of a suit, as a necessary step for the decision of the suit itself, cannot be called a "case". It has been held that the trial of an issue, however important it may be, including an issue as to jurisdiction of the court itself, cannot be treated as a case decided: vide *Buddhu Lal* v *Mewa Ram* (1). Where an *ex parte* decree is made and the jurisdiction of the court in the matter of the suit comes to an end, fresh proceedings may be started by the party against whom the decree has been made, by an application to have the *ex parte* decree set aside. The proceedings thus started may be treated as proceedings in the suit, yet it should be obvious that the newly started proceedings are complete in themselves, amounting to a "case". It has accordingly been decided in a Full Bench decision of this Court, *Radha Mohan Datt* v. *Abbas Ali Biswas* (2), that a revision would lie where the court passed an order setting aside an *ex parte* decree in defiance of the provisions of order IX, rule 13 of the Civil Procedure Code. Examples need not be multiplied, but as each case arises, the question to be considered is whether the proceeding out of which the application for revision has arisen is something which, although arising in the suit, may be treated as independent of the trial of it.

It is impossible, at any rate it is undesirable, to make an attempt to give an exhaustive definition of what a "case" may be and what it may not be. So many different questions may arise in future and have already arisen as to cause a great divergence of opinion among the learned Judges. I would, therefore, not make any further attempt at an exhaustive definition of the word "case". What I have said was only to indicate the

(1) (1921) I.L.R., 43 All., 564. (2) (1931) I.L.R., 53 All., 612.

method in which I approach a question that arises before me in revision.

By applying the principle which I have laid down for myself to follow, I am clearly of opinion that in the present instance no "case" has been decided by the court below. The question arose out of a suit of which proper cognizance was taken by the court below. Having taken cognizance of the suit, the learned Munsif had to decide whether the court fee paid was sufficient or not. Accordingly, he decided that the court fee paid was insufficient. This did not terminate the proceedings before the court and therefore it cannot be said that any "case" was decided. The order passed was only one of the orders necessary and preliminary to the hearing of the suit, and it cannot be said that it was something which was a complete and independent matter.

Mukerji, J.

The decision in *Lakshmi Narain Rai* v. *Dip Narain Rai* (1) starts with examining the question whether the court fee paid was sufficient or not. This, in my opinion, with all respect, was not the proper way. The first question to be decided was whether there was a "case decided" before this Court. If it was a "case" decided, then the question would be whether the court had jurisdiction to pass the order or not. A court hearing a suit has jurisdiction to decide whether the court fee paid is sufficient or not. It may decide rightly or it may decide wrongly. In either case, the decision is within the competence of the court, and in this view it cannot be said that in deciding that the court fee paid was insufficient the court exercised a jurisdiction not vested in it by law. The High Court, in revision, does not correct a mere error of law. Though the learned Judges have not said so in so many words, they have, I think, held that there was no jurisdiction in the court below to pass the order demanding further court fee, because in making that order the court held in effect

(1) (1932) I.L.R., 55 All., 274.

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that if the additional court fee was not paid the court would not hear the case. This would be a refusal to exercise a jurisdiction vested in the court. As I have pointed out, the whole question was approached in the reverse order to that which was proper. In my opinion, therefore, the case of *Lakshmi Narain Rai* (1) does not carry the weight which a decision of two learned Judges of this Court should carry.

In the result, I would also dismiss the application with costs.

KING, J.:—I agree and have nothing to add.

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PARMESHWAR SINGH AND OTHERS (PLAINTIFFS) *v.* SITALDIN DUBE AND ANOTHER (DEFENDANTS)*

Civil Procedure Code, section 144—*Restitution—Limitation—Whether an application for restitution is an application for execution—Limitation Act* (IX *of* 1908), *articles* 181, 182—*Starting point of limitation—Whether time begins to run from date of lower appellate court's decree or from date of High Court's decree—Mesne profits claimed in restitution after regaining possession—Starting point of limitation.*

Held, (MUKERJI J., dissenting) that an application for restitution under section 144 of the Civil Procedure Code is not an application for the execution of a decree within the meaning of article 182 of the Limitation Act and that article does not apply to it. It is an application not specifically provided for and is governed by article 181 of the Limitation Act.

Held, also, (SULAIMAN, C. J., dissenting) that limitation for applying for restitution begins to run from the date of the lower appellate court's decree reversing the first court's decree, on which date the right to apply for restitution first accrued; the decree of the High Court, confirming that of the lower appellate court, does not give a fresh starting point of limitation.

Held, further, that where the application for restitution was to recover mesne profits of land for the period between the dispossession in execution of the first court's decree and the

*Second Appeal No. 868 of 1932, from a decree of J. N. Mushran, Additional District Judge of Benares, dated the 25th of April, 1932, reversing a decree of Sarup Narain, Subordinate Judge of Jaunpur, dated the 25th of April, 1930.

(1) (1932) I.L.R., 55 All., 274.