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notice of its provisions. It could, at the best, be used for the purpose of cross-examination, in order to extract from the witness evidence to show that he was, in fact, aware of the character of the transaction affected by the document to which his attestation was affixed.”

The learned Counsel for the appellants has argued that more can be inferred from the fact that a witness has identified the executant, but in our opinion practically no more can be inferred from the fact of identification than from the fact of attestation. For the above reasons this appeal fails and is dismissed with costs.

Appeal dismissed.

FULL BENCH.

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Before Sir Louis Stuart, Knight, Chief Judge, Mr. Justice Wazir Hasan and Mr. Justice Gokaran Nath Misra.

SARDAR SAHDEO SINGH (PLAINTIFF-APPELLANT) v. SARDARANI CHANUN KUER AND OTHERS (DEFENDENTS-RESPONDENTS).*

Civil Procedure Code (Act V of 1908, sections 10 and 115—Revision by High Court—Suit stayed under section 10 of the Code of Civil Procedure—Order allowing continuation of trial of stayed suit, whether capable of revision by High Court.

Held, that an order allowing continuation of the trial of a suit which has been stayed and which ought to have remained stayed under section 10 of the Code of Civil Procedure is a “decided case” within the meaning of section 115 of the Code of Civil Procedure and is capable of being revised by the

*Section 115, Application No. 44 o 1927, against the order of Gulab Singh Joshi, the Subordinate Judge of Kheri, dated the 21st of November, 1927.

High Court. *Thakur Sital Singh v. Thakur Sitla Bakhsh Singh* (1), *Riasat Ali v. Rae Rajeshar Bali* (2), and *Lal Chand Mangal Sen v. Behari Lal Mehr Chand* (3), relied upon. *Wahid-un-nissa Bibi v. Zamin Ali Shah* (4), *Buddhu Lal v. Mewa Ram* (5), and *Shyam Sunder v. Sheoambar Ban* (6), and *Sultan Jahan Begam v. Sunder Lal* (7), referred to.

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The case was originally heard by a Bench of two judges who referred certain questions of law for decision to a Full Bench by their order, dated the 2nd, April, 1928, which is as follows:—

RAZA and NANAVUTTY, JJ. :—This is an application for revision under section 115 of the Code of Civil Procedure against an order of the Subordinate Judge of Kheri, dated the 21st of November, 1927, in original Suit No. 151 of 1921 pending in his Court.

One Gulab Singh had four sons, namely, (1) Arjun Singh, (2) Rajeshar Singh, (3) Tirloki Nath Singh and (4) Dwarka Nath Singh. Sahdeo Singh (plaintiff) is the son of Rajeshar Singh deceased. Sardarni Chunan Kuer (defendant No. 1) and Sardarni Lajwanti Kuer (defendant No. 2) are the widows of Tirloki Nath Singh. Sardarni Vidyawati Kuer (defendant No. 3) is the widow of Dwarka Nath Singh. Arjun Singh is defendant No. 4 in this suit.

The material facts are as follows:—

Rajeshar Singh (plaintiff's father) and his brothers named above, were owners of Doddpur estate in the Kheri district and had also considerable property in the Punjab. Rajeshar Singh, Tirloki Nath Singh and Dwarka Nath Singh died in 1918. Sanwal Singh, the manager of the Doddpur estate, had in his hands Rs. 70,000 in cash, belonging to

(1) (1919) 6 O.L.J., 96.

(2) (1910) 13 O.C., 109.

(3) (1924) I.L.R., 5 Lah., 288.

(4) (1920) I.L.R., 42 All., 290.

(5) (1921) I.L.R., 43 All., 564.

(6) (1921) 24 O.C., 231.

(7) (1920) I.L.R., 42 All., 409.

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the estate. He paid Rs. 17,500 to Sahdeo Singh (plaintiff) and Rs. 17,500 to Arjun Singh (defendant No. 4) on account of their shares. There was a dispute between the parties about the remaining Rs. 35,000. Hence Sanwal Singh instituted an interpleader suit (No. 151 of 1921) against the parties, in respect of the said sum of Rs. 35,000 in his hands, in the Court of the Subordinate Judge of Kheri, on the 2nd of June, 1921. He deposited the money in court and was then discharged from all liability to the defendants in that suit, on the 14th of December, 1921. Sahdeo Singh was made a plaintiff in lieu of the original plaintiff and the amended plaint was filed on the 14th of December, 1921. Sahdeo Singh (plaintiff) had already instituted a suit in the court of the senior Subordinate Judge, Jullundhar (Punjab), in respect of the entire family property, including the Doddpur estate, impleading the defendants Nos. 1 to 4 named above, in August, 1921. On the 26th of January, 1922, all the parties (excluding Arjun Singh) applied to the Subordinate Judge of Kheri, praying that the suit pending before him might be stayed, as the subject-matter thereof was included in the subject-matter of the suit pending before the senior Subordinate Judge of Jullundhar. The Subordinate Judge of Kheri granted the application and stayed the proceedings under section 10 of the Code of Civil Procedure. It was noted in the order that the suit would be taken up "on motion by either party, if, and when, necessary." The suit pending before the senior Subordinate Judge of Jullundhar was decided adversely to the plaintiff, Sahdeo Singh, on the 23rd of June, 1927. Sahdeo Singh has preferred an appeal which is still pending in the High Court of Lahore. On the 8th of September, 1927, Sardarni Chunan Kuer and Sardarni Vidyawati Kuer (defendants Nos. 1 and 3) moved the Subordinate

Judge of Kheri, to resume proceedings in the suit which had been consigned to records by order, dated the 26th of January, 1922. They claim to be entitled to a six annas share in the whole property under the decree passed by the Jullundhar court.

This application was opposed by Sahdeo Singh plaintiff. His principal contention was that the Kheri court had no jurisdiction to revive and decide this suit, as the subject-matter of this was the subject-matter of that suit which had been decided by the Jullundhar court and an appeal had already been filed from the decree passed by the Jullundhar court.

The learned Subordinate Judge granted the application made by the defendants Nos. 1 and 3, holding that section 10 of the Code of Civil Procedure did not apply to the suit. He found that the subject-matter in dispute in the present suit was not included in the Jullundhar suit. He was also of opinion that the Jullundhar suit was not "a previously instituted suit" within the meaning of section 10 of the Code of Civil Procedure. He therefore ordered on the 21st of November, 1927, that proceedings should be resumed in the present suit. The present application for revision has been filed against that order.

It is contended on behalf of the applicants that in view of section 10 of the Code of Civil Procedure the Subordinate Judge of Kheri has no jurisdiction to proceed with the suit pending before him so long as the Jullundhar suit is *sub judice* before an appellate court and that he has no jurisdiction to ignore the terms of the order, dated the 26th of January, 1922, staying the suit under section 10 of the Code of Civil Procedure. It is contended further that in any view of the case the learned Subordinate Judge has acted with material irregularity in not staying the suit

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pending before him, pending the decision of the appeal in the Jullundhar suit.

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The Subordinate Judge has found that the subject-matter of the Kheri suit is not covered by the Jullundhar suit. He bases his finding on exhibit A3, which purports to be a copy of the plaint filed in the Jullundhar court. Exhibit A3 is an incomplete copy. The copy of the plaint filed by the plaintiff in this Court, shows that the subject-matter of the Kheri suit is really covered by the Jullundhar suit. The parties had themselves admitted in their application, dated the 26th of January, 1922, that the subject-matter of the Kheri suit was included in the subject-matter of the suit which had been instituted in the Jullundhar court. It must be held, therefore, that the subject-matter in dispute in the present suit was included in the subject-matter in dispute in the suit decided by the Jullundhar court. The order of the learned Subordinate Judge cannot therefore be supported on that ground, but the difficulty which arises is—has this Court power to interfere under section 10 of the Code of Civil Procedure? Is the order in question a “case” within the meaning of that section? If it is not a “case” within the meaning of that section, the present application is not maintainable and must be rejected. Is the order in question a “case” within the meaning of that section? It the order in question a “case” includes an interlocutory order. It has been held by some courts that the word “case” includes part of a case and by others that it does not. In *Buddhu Lal v. Mewa Ram* (1) a Full Bench of the Allahabad High Court held that the word “case” under section 115 of the Code of Civil Procedure does not include an issue or part of a case, that it does not therefore include an interlocutory order and that the High Court has no power to interfere in revision with interlocutory orders.

(1) (1921) I.L.R., 48 All., 564.

in any case. The same view of the section was taken by a Full Bench of the Lahore High Court in *Lal Chand Mangal Sen v. Behari Lal Mehr Chand* (1), decided in 1924. On the other hand, it has been held by the Calcutta, Madras and Patna High Courts that the word "case" is wide enough to include an interlocutory order, that the words "records of any case" include so much of the proceedings in any case as relate to interlocutory order and that the High Court therefore has the power to interfere in revision with orders passed at any stage of the suit, though there may be another remedy open to the injured party, e.g. by appeal from the final order or decree under section 105 of the Code of Civil Procedure (see I.L.R., 14 Calc., 768; I.L.R., 32 Mad., 334 and I.L.R., 3 Pat., 930). It was held in the case of *Hevanchal Kunwar v. Kanhai Lal* (2) that no application for revision will lie against an interlocutory order which does not determine the case, but which is made with the object of collecting materials upon which the case is to be determined thereafter. The word "case" as used in section 115 of the Code of Civil Procedure must ordinarily mean the whole case. But where there are independent proceedings arising out of a case, such as a proceeding to restore a case dismissed in default or to set aside a decree *ex parte*, for which the Legislature has provided an independent remedy or a different procedure, such proceeding may be a "case" within the meaning of the section. Any orders on matters arising incidentally in the course of the hearing of such proceeding, the object of which is to bring on the record or to exclude from it materials upon which its decision is to be based, are not by themselves decisions in a case which can be revised until the case is finally concluded. The

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(1) (1924) I.L.R., 5 Lah., 288.

(2) (1909) 12 O.C., 405.

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ruling in the case of *Shyam Sunder v. Sheoambar Ban* (1) is to the same effect. It was however held in the case of *Thakur Sital Singh v. Thakur Sitala Bakhsh Singh* (2) that an order passed under section 10 of the Code of Civil Procedure as to stay of a suit is not such an interlocutory order as is not open to revision under section 115 of the Code of Civil Procedure. It was held in the case of *Sultanat Jahan Begam v. Sundar Lal and others* (3) that an application under section 10 of the Code of Civil Procedure for the stay of a suit is not a "case" and an order for stay passed on that application is not the decision of a "case" within the meaning of that word in section 115 of the Code of Civil Procedure and no revision lies from such an order. The word "case" under section 115 is not confined to a suit, but it cannot be construed to mean an interlocutory order in a suit such as an order under section 10 of the Code of Civil Procedure, although the order may be of such a nature that it cannot be interfered with even under the provisions of section 105 of the Code when an appeal is preferred from the final decree in the suit.

As there is a conflict of opinion, whether the word "cases" includes an interlocutory order, we think it proper to submit the following questions of law for the decision of a Full Bench under section 14 of the Oudh Courts Act:—

- (1) "Is an order by which proceedings are resumed in a suit which had been stayed under section 10 of the Code of Civil Procedure, a 'case decided,' within the meaning of section 115 of the Code of Civil Procedure ?

(1) (1921) 24 O.C., 231.

(2) (1919) 6 O.L.J., 96.

(3) (1920) I.L.R., 42 All., 409.

- (2) Is an order the effect of which is to refuse to exercise a jurisdiction vested in the court, under section 10 of the Code of Civil Procedure, open to revision under section 115 of the Code of Civil Procedure ?

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Messrs. *Bisheshwar Nath Srivastava, Niamatullah and Niranjan Lal Tandon, for the applicant.*

Mr. Radha Krishna, for the opposite party.

STUART C.J.:—This is a reference made by a Bench under section 14 of the Oudh Courts Act.

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The Bench has asked us to decide two questions:—

- (1) Is an order by which proceedings are resumed in a suit which had been stayed under section 10 of the Code of Civil Procedure a “case decided” within the meaning of section 115 of the Code of Civil Procedure ?
- (2) Is an order the effect of which is to refuse to exercise a jurisdiction vested in the court under section 10 of the Code of Civil Procedure open to revision under section 115 of the Code of Civil Procedure ?

There has been considerable difference of opinion as to whether proceedings of this nature are to be called a “case decided.” The majority of High Courts in India appear to be of opinion that such proceedings amount to a decided case. There is, however, a dissentient view which has been stated last in a decision of a single Judge of the Allahabad High Court in *Sultanat Jahan Begam v. Sundar Lal* (1). This view however is not universal in the Allahabad High Court for a Bench of the same High Court in a previous case in *Wahid-un-nissa Bibi v. Zamin Ali Shah* (2) arrived at a different conclusion. When a

(1) (1920) I.L.R., 42 All, 409.

(2) (1920) I.L.R., 42 All., 290.

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member of the late court of the Judicial Commissioner of Oudh I had to consider the question about ten years ago in *Thakur Sital Singh v. Thakur Sital Bahksh Singh* (1). The view which I then took was that proceedings under section 10 of the Code of Civil Procedure were a "decided case" within the meaning of section 115. I further continued that the question of jurisdiction would invariably arise in such a decision. I see no reason to take a view different from the view which I held then and I accordingly answer both the questions referred to us in the affirmative.

Stuart, C. J.

I note that my answers to these references are to be considered as the answers to the questions exactly as they stand. I do not express any opinion upon any matter in the proceedings before the Bench which has made the reference to which I have not referred directly. It will be open when the matter goes back for arguments to the Bench for the learned Counsel for the defendants opposite party to argue that there has in effect been no order under section 10 or to take any other position which he may wish. I further add a qualification to my answer to the second question. It is this : I think that the words "other conditions being fulfilled" should have been added to the question.

HASAN, J. :—I agree with the reply given by the Hon'ble the CHIEF JUDGE. I have very little to add. The question in the reference is as to whether the word "case" used in section 115 of the Code of Civil Procedure would cover a proceeding of the nature with which we are concerned in the present instance. As pointed out in the case of *Lal Chand Mangal Sen v. Behari Lal Mehr Chand* (2) by the learned Chief Justice Sir SHADI LAL it is beyond question that "case" is not synonymous with "suit". While

(1) (1919) 60 O. L. J., 96.

(2) (1924) I.L.R., 5 Lah., 288.

every suit is a case it cannot be said that every case is a suit. The word "case" is a more comprehensive expression and includes not only a suit but other proceedings which cannot be described as a suit. Now the word "case" is not only not synonymous with the word "suit" but unfortunately it is not even a term of any precise signification. Certain proceedings may well be characterized as a case while other proceedings might not be so characterized though both may arise out of a suit. In this difficulty of reaching to any precise definition of the word "case" it is impossible to hold according to my judgement that any "branch of a suit" cannot be regarded as a "case," as the learned CHIEF JUSTICE in the case just now mentioned was inclined to hold. It appears to me that we should make no effort to create a definition where a definition is more likely to lead to confusion than to clarity of meaning. I am content to consider the matter from the standpoint that the meaning to be given to the word "case" in section 115 must depend on the particular nature of the proceedings. Having reached to this conclusion the other conclusion irresistibly follows that a proceeding of the nature to which this reference relates that is an order allowing continuation of the trial of a suit which has been stayed and which ought to have remained stayed under section 10 of the Code of Civil Procedure is a "decided case" within the meaning of section 115 of the Code of Civil Procedure. The Hon'ble the CHIEF JUDGE has rightly, if I may respectfully say so, adverted in his judgement to certain assumptions made in the two questions for decision, with the correctness or otherwise of those assumptions we are not concerned. We must accept them as correct for the purpose of our judgements and if they are

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not well founded it is open to the party injured to ask for correction before the division Bench.

MISRA, J. :—I am also of opinion that the two questions referred to us should be answered in the affirmative in the manner answered by the Hon'ble the CHIEF JUDGE. I am of opinion that the word "case" cannot be read as equivalent to a "suit" and should be read in a wider sense. In the case of *Riasat Ali v. Rae Rajeshar Bali* (1) a Bench of the late Court of the Judicial Commissioner of Oudh decided that the High Court had power of revision under section 115 of the Code of Civil Procedure in regard to independent proceedings arising out of a suit. It was observed therein that such proceedings may amount to a "case" within the meaning of section 115 and I concur in that view. I may also state that I am in full agreement with the view of law expressed in another case decided by the late court of the Judicial Commissioner of Oudh reported in *Thakur Sital Singh v. Thakur Silla Bakhsh Singh* (2) to which the Hon'ble the CHIEF JUDGE was a party. It was observed in that case that orders passed under section 10 of the Code of Civil Procedure should be considered to stand on quite a different footing from those which are generally considered "interlocutory orders" passed under the Code of Civil Procedure. Such orders must be held to amount to a "case decided" which would be capable of being revised by the High Court. I am therefore of opinion that the two questions referred to us should be answered in the way indicated above.

By THE COURT. :—The questions are answered in the affirmative.

Application granted.

(1) (1910) 13 O.C., 109.

(2) (1919) 6 O.L.J., 96.