

REVISIONAL CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava and Mr.
Justice E. M. Nanavutty

1933
February, 13

JAGAN NATH AND ANOTHER (PLAINTIFFS-APPLICANTS) v.
BISHWA RATTAN (DEFENDANT-OPPOSITE PARTY)*

*Civil Procedure Code (Act V of 1908), Order XX, rule 3—
Declaratory suit dismissed as barred by proviso to section
42, Specific Relief Act—Appeal—Appellate court allowing
plaintiff to amend the plaint on payment of necessary court-
fee and costs—Appellate court's power to extend time fixed
for payment after its judgment and final order.*

Order XX, rule 3 of the Code of Civil Procedure shows that after the judgment has been signed by a Judge, he has no authority to alter it except as provided by section 152 or on review.

Where, therefore, a suit is dismissed on the ground that it is barred under the proviso to section 42 of the Specific Relief Act but on appeal the lower appellate court holds that the plaintiffs should be allowed to amend their plaint so as to convert it into a suit for possession and orders that if the plaintiffs pay the necessary court-fee and costs of the lower court, they should be allowed to amend the plaint, but if they fail to do so, the suit and the appeal should stand dismissed, held, that as soon as the judgment and the final order prepared in pursuance of it has been signed by the lower appellate court that court became *functus officio* and was no longer seized of the case and it was not therefore open to that court to extend the time fixed by its order for the plaintiff to deposit the necessary court-fee and costs. *Sheikh Hamidur Rahman v. Shahanand Das* (1) and *Sajjadi Begam v. Diawar Husain* (2), relied on.

Mr. *Salig Ram*, for the applicants.

Mr. *Hyder Husain*, for the opposite party.

SRIVASTAVA and NANAVUTTY, JJ. :—The plaintiffs-applicants instituted a suit for a declaration in the Court of the Munsif of Sitapur. The Munsif dismissed the suit on the ground that it was barred under the proviso to section 42 of the Specific Relief Act. On

*Section 115, Application No. 7 of 1932, against the order of Babu Gopal Chandra Sinha, Munsif of Sitapur, dated the 25th of July, 1931.

(1) (1925) Pat., 153.

(2) (1918) I. L. R., 40 All. 579.

appeal the Additional Subordinate Judge on the 16th of February, 1931, held that the plaintiffs should be allowed to amend their plaint so as to convert it into a suit for possession and ordered that if the plaintiffs paid the necessary court-fee and costs of the lower court, they should be allowed to amend the plaint. He further ordered that if the plaintiffs failed to do so, the suit and the appeal should stand dismissed. The plaintiffs failed to deposit the court-fee and costs within the period of six weeks allowed by the order of the Additional Subordinate Judge. They, however, obtained extension of time from the Additional Subordinate Judge more than once and ultimately before expiry of the period of the last extension granted to them, made good the deficiency in the court-fee and paid the costs. The Munsif then issued notice to the defendants who appeared in pursuance of it and objected to the extensions of time granted to the plaintiffs by the Additional Subordinate Judge. The Munsif held that the orders granting extension of time were wholly without jurisdiction and that the result of the plaintiffs' failure to deposit the necessary costs and court-fee within the time allowed under the judgment and order of the Additional Subordinate Judge was that the appeal failed automatically. The plaintiffs have applied to this Court in revision against this order of the Munsif.

We are of opinion that the order is correct and should be upheld. Order XX, rule 3 of the Code of Civil Procedure shows that after the judgment had been signed by the Additional Subordinate Judge, he had no authority to alter it except as provided by section 152 or on review. As soon as the judgment and the final order prepared in pursuance of it had been signed by the Additional Subordinate Judge, the latter became *functus officio* and was no longer seized of the case. It was not therefore open to the Additional Subordinate Judge to extend the time fixed by his order. This view is supported by the decisions of *Sheikh Hamidur*

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Rahman v. Shahanand Das (1) and Sajjadi Begam v. Dilawar Husain (2).

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We can therefore see no ground for interference and dismiss the application with costs.

Application dismissed.

APPELLATE CIVIL

Before Mr. Justice E. M. Nanavutty

1933

February, 13

NAQI AHMAD, SATYID (JUDGMENT-DEBTOR-OBJECTOR-APPELLANT) v. SHEO SHANKAR LAL ALIAS JHABBU LAL AND ANOTHER (DECREE-HOLDERS-RESPONDENTS)*

Interpretation of statutes—Enactment affecting procedure, if to be given effect to at once—Government notification that with effect from a particular date execution of decrees in cases in which a civil court has ordered sale of any agricultural land is to be transferred to Collector—Order of sale passed by civil court before that date, whether affected by the notification affecting change in procedure.

Held, that any enactment affecting procedure must be given effect to at once inasmuch as no one has a vested right in any particular form of procedure.

Where, therefore, a Government notification is made that with effect from a particular date the execution of decrees in cases in which a civil court has ordered any agricultural land situated in the United Provinces of Agra and Oudh or any interest in such land to be sold, shall be transferred to the Collector, the notification applies to a case where an order for sale has been passed by a civil court before the date entered in the notification but the sale is to take place after that date. *Republic of Costa Rica v. Erlanger (3)*, *Warner v. Murdoch (4)*, *Wright v. Hale (5)*, *Fatch Chand v. Muhammad Bakhsh (6)*, *Gokul Prasad v. Ali Bakhsh (7)*, *Delhi Cloth and General Mills Co. v. Income-tax Commissioner of Delhi (8)*, and *Colonial Sugar Refining Co. v. Irving (9)*, relied on.

*Execution of decree Appeal No. 24 of 1932, against the order of Pandit Bish Nath Hukku, Additional Subordinate Judge of Hardoi, dated the 13 th of April, 1932.

(1) (1925) Pat., 153.

(3) (1876) L. R., 3 Ch. D. 69.

(5) (1860) 6 H. and N., 227.

(7) (1910) 13 O. C., 152.

(2) (1918) I. L. R., 40 All., 579.

(4) (1877) L. R., 4 Ch. D. 752.

(6) (1894) I. L. R., 16 All., 259.

(8) (1927) 4 O. W. N., 1053.

(9) (1905) I. R., A. C., 369.