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Thomas,
G. J. and
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to a defendant who should become major during the pendency of a suit. The reason for this omission obviously is that while a plaintiff on becoming major can put an end to the litigation a defendant on attaining majority can not do so and the case must proceed. He has notice of the case already and so no further notice of it need be given to him. It is absurd to say that the plaintiff or the court should give notice to him that he had become major, a fact which he must know. If he should fail to take any action on attaining majority, the presumption is that he choose to allow the case to be conducted by his quondam guardian or by the counsel that was engaged by that guardian. It cannot in these circumstances be said that the court had no jurisdiction to proceed with the case or that the decree passed by it was a nullity."

Owing to the view that we take on the question of fraud, it would be useless to send back the case to the court below.

We therefore dismiss the appeal with costs

Appeal dismissed.

REVISIONAL CIVIL

Before Mr. Justice Ziaul Hasan and Mr. Justice R. L. Yorke
GULZARI SINGH (DEFENDANT-APPLICANT) v. RAM ADHIN
(PLAINTIFF-OPPOSITE PARTY)*

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August, 12

United Provinces Agriculturists' Relief Act (XXVII of 1934), section 7—Suit instituted and decreed ex parte before Act came into force—Ex parte decree set aside subsequently—Section 7, Agriculturists' Relief Act, if applicable—Civil Procedure Code (Act V of 1908), order VII, rule 10—Suit instituted in right court—Subsequent legislation requiring it to be filled in another court—Order VII, rule 10, whether applies.

Section 7 of the United Provinces Agriculturists' Relief Act is applicable to suits instituted before the Act came into force, and the fact that an *ex parte* decree, subsequently set aside, was passed in the suit before the Act came into force is immaterial.

*Section 115 Application No. 101 of 1938, against the order of Raghubar Dayal, Esq., I.C.S., District Judge of Unao, dated the 6th of October, 1936, reversing the order of Mr. Hasan Irshad, Munsif of Safipur at Unao, dated the 30th of April, 1936.

Jamuna Prasad v. Bhawani Dayal (1) and *Chunni Lal v. Ajudhiya Prasad* (2), relied on. *Suryaji v. Tukaram* (3), distinguished.

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The provisions of rule 10(1) of order VII of the Code of Civil Procedure are sufficiently wide to cover a case in which by operation of legislation the situation arises, even after a suit has been instituted, that it should have been instituted in another court, and the plaint can, in such a case, be returned for presentation to the proper court.

Ziaul
Hasan
and
Yorke, JJ.

Mr. *Hyder Husain*, for the applicant.

Messrs. *D. K. Seth* and *Siddheshwar Shukla*, for the opposite party.

ZIAUL HASAN and YORKE, JJ.—This is an appeal from an appellate judgment of the District Judge of Unao, who had reversed the decree of the Munsif of Safipur at Unao, returning the plaint to the plaintiff under the provisions of order VII, rule 10 of the Code of Civil Procedure for presentation to the proper court.

A preliminary objection was taken that no appeal lies, and in view of the provisions of section 104(2) of the Code of Civil Procedure read with the provisions of order XLIII, rule 1, learned counsel for the appellant concedes the force of the preliminary objection, but urges that as the point for decision is one which relates solely to the question of jurisdiction, it is a matter which can and should be taken up in revision, and we accede to that contention.

The plaintiff Ram Adhin had instituted a suit in the Court of the Munsif, Safipur, to recover Rs 1,546, principal and interest, on foot of the pro-note and receipt dated the 27th of March, 1932. The suit was instituted on the 25th of March, 1935, and there is no question that at that date the suit was properly instituted in that court. The suit was decreed *ex parte*, but on the 7th of April, 1936, on the application of the defendant it was restored. Between the date of institution of the suit and this order of the 7th of April, 1936, the Agri-

(1) (1937) I.L.R., All., 757.

(2) (1937) A.L.J.R., 1235.

(3) (1890) I.L.R., 4 Bom., 358.

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culturists' Relief Act had come into force on the 10th of April, 1935, and in consequence when the suit came up for regular hearing a second time the defendant pleaded that under the provisions of section 7 of that Act the Court of the Munsif of Safipur had no jurisdiction to entertain the suit, and the suit must be instituted in the proper court in the Hardoi district. The learned Munsif referred to the provisions of section 7 of the Agriculturists' Relief Act which provides as follows:

"Notwithstanding anything contained in any other enactment for the time being in force, every suit for recovering an unsecured loan, in which the defendant is an agriculturist, shall be instituted and tried in a court within the local limits of whose jurisdiction the agriculturist defendant actually and voluntarily resides."

(We have omitted all redundant wording not necessary for the decision of the present case.) He went on to say that it was almost undisputed that the defendant was an agriculturist, and it was admitted that he was a resident of a place in the Hardoi district. After considering the effect of the suit having been filed prior to the enforcement of the Agriculturists' Relief Act, he held that the section quoted had retrospective effect so as to affect suits instituted but not yet decided at the date of the enforcement of the Act. He based this decision largely on the aims and objects with which the Act was passed. He accordingly returned the plaint to the plaintiff for presentation to the proper court.

Thereupon the plaintiff appealed to the Court of the District Judge, and the District Judge after considering the meaning of the words "instituted and tried" came to the conclusion that the section had reference only to suits instituted after the coming into force of the Act. He further remarked that order VII, rule 10 was not properly applicable in the circumstances of the present case, which had certainly not been instituted in any court other than the proper court, and he further evidently felt that on this view of order VII, rule 10, a difficulty would arise as to how a court could make

an order which would not be unjust to the plaintiff since in cases where the plea taken was that the defendant was a resident of another district, neither the trial court nor the Court of the District Judge would have any power to make an order of transfer, and the Act itself contained no provision to meet this need.

Learned counsel for the defendant-applicant did not feel it necessary to discuss the points raised in the Judgment of the learned District Judge at any length but relied on two recent rulings of the Allahabad High Court in cases of an exactly similar nature. The first case quoted by him is *Jamuna Prasad and another v. Bhawani Dayal* (1), in which the CHIEF JUSTICE and BENNET J. held that section 7 of the United Provinces Agriculturists' Relief Act is applicable to suits instituted before the Act came into force, and the fact that an *ex parte* decree, subsequently set aside, was passed in the suit before the Act came into force is immaterial. In the course of their judgment in this case the learned Judges remarked, "It seems to us that the intention of the Legislature is that no court should have jurisdiction to entertain a suit when it is filed or to try it unless the conditions mentioned in that section are fulfilled. The Act is professedly for the relief of agriculturists. The object of the section apparently is that an agriculturist defendant should not be dragged to a distant place for the purpose of defending a claim brought against him, and that such suit should be tried and decided by a court within whose jurisdiction he either resides or within whose jurisdiction his property is situated, if he resides outside the province." The order made in that case was that the court below would return the plaint to the plaintiff for presentation to the proper court.

In *Chunni Lal v. Ajudhiya Prasad and others* (2) another Bench consisting of COLLISTER J. and BAJPAI J. held that where a suit was instituted prior to the

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(1) (1937) I.L.R., All., 757.

(2) (1937) A.L.J.R., 1255.

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Agriculturists' Relief Act coming into force and subsequently an objection was taken under section 7 of the Act that the suit ought to be tried where the defendants were residing, section 7 of the Act contemplates that no court should have jurisdiction to entertain a suit when it is filed or to try it unless the conditions mentioned in section 7 are fulfilled. In coming to this decision the learned Judges remarked, "Act No. XXVII of 1934 was enacted by the Legislature for the advantage and relief of the agriculturists and the courts should keep this fact in view when they have to interpret the provisions of any particular section which may have been drafted in ambiguous language."

Learned counsel for the opposite party has urged upon us the difficulty of applying order VII, rule 10 and has sought to base an argument on the interpretation of a similar provision in the Bombay Agriculturists' Relief Act, on which the United Provinces Agriculturists' Relief Act is said to have been based, in the case of *Suryaji and other v. Tukaram and other* (1). We do not think that this ruling is properly applicable in the present case. He has further suggested that in any case the power of this Court to interfere in revision is a discretionary power and that this is not a case in which this Court should exercise the discretion to interfere with the lower court's order. We are, however, of opinion that there is no possible ground on which we should differ from the view taken in this matter by the Allahabad High Court and should refuse to exercise our discretion.

As regards the difficulties suggested by the counsel for the opposite-party as arising out of order VII, rule 10 and the possibility of the suit being now held to be barred by limitation, we think that the provisions of rule 10(1) of order VII of the Code of Civil Procedure, are sufficiently wide to cover a case in which by operation of legislation the situation arises, even after a suit has

(1) (1880) I.L.R. 4 Bom., 358.

been instituted, that it should have been instituted in another court. As regards the question of limitation it will be for the plaintiff when presenting his plaint to the court, which is now the proper court in which to present it, to make an application under the relevant section of the Limitation Act.

Following the view taken by the Allahabad High Court in the case referred to, we allow the application in revision with costs, set aside the order of the learned District Judge and restore the order of the original court that the plaint be returned to the plaintiff for presentation to the proper court. The parties will bear their own costs in the lower courts.

Application allowed.

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APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan and Mr. Justice R. L. Yorke

CHINTAMAN TEWARI (PLAINTIFF-APPELLANT) v.
BHAGIRATHI TEWARI AND OTHERS (RESPONDENTS)*

1938

September, 5

Civil Procedure Code (Act V of 1908), section 2(2)—Preliminary decree, meaning of—Decree declaring rights of parties and requiring further proceedings to be taken before plaintiff can get relief claimed, whether preliminary decree—Limitation Act (IX of 1908), article 181—Article 181, whether applies to an application for final decree in a partition suit.

Where a decree not only declares the rights of the several parties interested in the property but also requires further proceedings to be taken before the plaintiffs could get relief claimed by them, it is a preliminary decree. *Tajammul Husain v. Bunde Raza* (1) and *Lalta Prasad v. Brahma Din* (2), referred to.

Article 181 of the first schedule of the Indian Limitation Act does not apply to an application for a preliminary decree in a partition suit being made final. *Bisheshwar Gir Goshain v. Satish Chandra Chatterji* (3), dissented from.

*First Civil Appeal No. 72 of 1936, against the order of Mr. Kishan Lal Kaul, Civil Judge of Fyzabad, dated the 23rd of April, 1936.

(1) (1920) 7 O.L.J., 538.

(2) (1930) I.L.R., 5 Luck., 280.

(3) (1929) Oudh, 117.