REVISIONAL CIVIL.

Before Das and Ross, J. J.

1924.

April, 1.

RAMESHWAR MAHTON

v.

LALA DWARKA PRASAD.*

Code of Civil Procedure, 1908 (*Act V of* 1908), *section* 151, *Order XLVII, rule* 1—*suit dismissed on a preliminary ground—application under section* 151 *to set aside decree allowed by Court—Revision by High Court.*

A court has no inherent jurisdiction under section 151, Civil Procedure Code, to do that which is prohibited by the Code. But where a suit was dismissed on a preliminary ground and the plaintiff applied under section 151 to the Court to set aside the decree under its inherent powers, and the Court granted the prayer, and an application in revision, was made to the High Court to set aside the order, *held*, that inasmuch as a prayer for review under Order XLVII, rule 1, if made, could have been granted by the Court, the mere fact that the plaintiff, instead of applying, as he should have done, under Order XLVII, rule 1, had applied under section 151, was no ground for interference in revision.

Application by the defendants.

The facts of the case material to this report were as follows :—

Plaintiffs, opposite party, instituted a rent suit against the petitioners whose defence *inter alia* was that the plaintiffs' names not having been registered under the Land Registration Act, the suit was not maintainable in law. After several adjournments the Subordinate Judge rejected the plaintiffs' petition for time and heard the suit and dismissed it with cost. After the dismissal of the suit the plaintiffs filed an application purporting to be under section 151 of the

* Civil Revision Cases nos. 468, 479, 480, 481, 482 and 488 of 1923, from an order of M. S. Ghalib Hasnain, Subordinate Judge, Second Court, Patna, dated the 6th October, 1923.

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Code of Civil Procedure for restoration of the suit on the ground that they had secured the certificate necessary under the Land Registration Act. The Subordinate Judge granted the application and set aside the order of dismissal. The defendants applied in revision to the High Court against the order of restoration.

Atul Krishna Ray, for the petitioner: When the judgment was once signed, the Court had no jurisdiction to alter it under section 151 of the Code of Civil Procedure. The only remedy open to the plaintiff was to apply under Order XLVII, rule 1, for a review of the judgment. Order XX, rule 3, clearly lays down that a judgment when once signed, shall not be altered or added to save as provided by section 152 or on review. Therefore, if the application for the restoration of the case was specifically made under section 151 of the Code, the Court should not have interfered, inasmuch as it had no jurisdiction to do so under that section.

K. P. Jayaswal (with him *Bimola Charan Sinha*), for the opposite party: The Court, in fact, treated the application as one made under Order XLVII, rule 1. It makes no difference that section 151 was incidentally mentioned in the application. Where the plaintiff has as a matter of fact purported to apply for a review of the judgment, there is no want of jurisdiction on the part of the learned Subordinate Judge, if he, instead of exercising his powers under section 151 as prayed for in the application, acts under Order XLVII, rule 1. I rely on *Noor Ashraf* v. *Harbans Narayan Singh* (1).

S. A. K.

DAS, J.—It may be conceded that there is no jurisdiction in the Court to set aside its own decree under section 151 of the Code. It ought to be remembered that the Court has no inherent jurisdiction

(1) (1920) Pat. 369.

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to do that which is prohibited by the Code, and Order XX, rule 3, of the Code provides that:

"a judgment, when once signed, shall not afterwards be altered or added to, save as provided by section 152 or on review."

In my opinion there was no power in the Court to alter or add to the judgment in the exercise of its inherent jurisdiction.

But the question now arises whether we ought to set aside the order passed by the Court. The application before us is under section 115 of the Code and it is well established that the Court is not bound to interfere under section 115 except in aid of justice. What happened was this. The applicants were the tenants and the opposite party was the landlord. It was objected that the name of the landlord had not been registered in the Land Registration Department, and the Court on that ground dismissed the suit. While the judgment was actually being written the landlord produced documents showing that his name had actually been registered in the Land Registration Department. The learned Judge says that these documents were produced before he signed his judgment; but as a matter of fact his attention was drawn to it after he signed the judgment. There is no question that, had the opposite party applied for review, the Court would have granted review without the slightest hesitation. All that can now be said is that instead of applying under Order XLVII, rule 1, as the landlord should have done, he applied under section 151 of the Code.

In our opinion we ought not to exercise our power under section 115 in this case.

The application must be refused, but, in the circumstances, without costs.

This order will govern analogous Civil Revision Cases nos. 479, 480, 481, 482 and 483 of 1923.

ROSS, J.—I agree.

Application rejected.