

FULL BENCH.

1936.

*Before Courtney Terrell, C.J., Macpherson and Fazl Ali, JJ.*March, 3.

BRAJNANDAN SINGH

v.

RAMNATH MALI.*

Provincial Small Cause Courts Act, 1887 (Act IX of 1887), section 25—suit against person residing in another Province—intercession by the Criminal Investigation Department on the ground that the suit was fraudulent—procedure to be adopted—postponement of case on receipt of letter from third party if proper—order for postponement passed without informing plaintiff's pleader, if proper.

The plaintiff, an inhabitant of Balia district in the United Provinces sued a co-villager of his in the Small Cause Court at Hazaribagh for a sum of money. The defendant approached the District Magistrate of Ballia and alleged that the suit was fraudulent and the District Magistrate moved the Criminal Investigation Department of this Province for enquiry. On the first date of hearing the defendant did not appear and the Court adjourned the case to the 25th February, 1935. On the 14th of February the Inspector-General of Police wrote a letter to the Court for a postponement for two months and keeping the records of the case in safe custody. The court without giving intimation to the plaintiff adjourned the suit. After some adjournments the defendant eventually appeared on the 22nd July. The case was heard and dismissed. The petitioner moved the High Court in revision.

Held, that the presiding judge ought not to have taken judicial notice of the letter of the 14th February and in any event ought not to have passed any orders except in the presence of the plaintiff and in open court and not until the 25th February which was the date fixed.

Held, also, that the proceedings of the court were not according to law. The intervention by a third party in a suit however excellent the motive may be, is contrary to judicial

* Civil Revision no. 624 of 1935, from an order of Babu Basu Prasad, Munsif of Hazaribagh, dated the 19th August, 1935.

1936.

BRAJNANDAN
SINGH
v.
RAMNATH
MALI.

principles. The contest is restricted to the parties or persons put forward under the usual procedure by the parties to represent them therein. Government or any authority designated by Government cannot intervene at all except on formal authority by the defendant to the Government Pleader or other pleader in that regard.

If a postponement of the trial is required to enable investigation to be made the application should be made through the defendant. The grant of postponement to the defendant is in the discretion of the Court and will be exercised upon consideration of the materials placed by the defendant.

Communication to the court by letter or otherwise from third party should not form part of the record.

Application in revision by the plaintiff.

The facts material to this report are set out in the judgment of the Court.

Mr. Baideo Sahay, for the petitioner.

The Government Advocate, for the opposite party.

COURTNEY TERRELL, C.J., MACPHERSON AND FAZL ALI, JJ.—This is an application under section 25 of the Small Cause Court Act. The petitioner, who is an inhabitant of Sheopurdiar in the district of Balia in the United Provinces at present residing at Hazaribagh in this Province, sued the defendant, a Mali, also of Sheopurdiar, in the small cause court at Hazaribagh on the 7th December, 1934, for a sum of Rs. 39-12-6 being principal and interest on a loan of Rs. 19 alleged to have been advanced at Hazaribagh on the 5th January, 1932. The defendant denied taking the loan from the plaintiff or even visiting Hazaribagh in January, 1932, and contended that the suit had been instituted out of ill-feeling with a view to harass him.

The Judge in an elaborate judgment found that the alleged transaction was not true and that the suit was groundless and fraudulent and dismissed it.

This Court has called for the record of the case for the purpose of satisfying itself that the decree passed is according to law.

On behalf of the petitioner it is urged that the decision ought not to stand in view of certain happenings in the Court which have or may have influenced the presiding judge.

It appears that on receipt of the summons the defendant approached the District Magistrate of Balia with the allegation that the claim was fraudulent. In reliance upon instructions to District officers in connection with inquiries into fraudulent claims against defendants in districts distant from their homes where defence is difficult, the District Magistrate requested the Criminal Investigation Department of the Province, Bihar and Orissa, in which the suit was brought to make inquiry. The first date in the suit was the 21st January, 1935; but as the defendant did not appear, the Judge adjourned the hearing to the 25th February. The adjournment was in the usual course and was particularly proper in a case where the defendant lived at a great distance in another province. But on the 14th February the Judge having received from the Deputy Inspector-General of Police, Criminal Investigation Department, a letter requesting the Court to adjourn the suit for two months and to keep the record in safe custody, adjourned the hearing till the 8th April and sent an intimation of the fact to the Deputy Inspector-General of Police. Here the action of the Judge was unsound. The record shows that the postponement was allowed without previous intimation to the pleader of the plaintiff, the order merely being shown to him immediately after it had been passed. The presiding judge ought not to have taken any judicial notice of the letter and in any event ought not to have passed any orders except in the presence of the plaintiff or his pleader and preferably not until the

1936.

BRAJNANDAN
SINGH

v.

RAMNATH
MALL.COURTNEY
TERRELL,
C. J.,MACPHER-
SON AND
FAZI, ALL,
JJ.

1936.

BRAJNANDAN
SINGH

v.

RAMNATH
MALL.COURTNEY
TERRELL,
C. J.,MACPHER-
SON AND
FAZL ALI,
JJ.

25th February which was the date fixed. Subsequently adjournments were granted upon similar application by letter by the Deputy Inspector-General and the defendant eventually appeared on the 22nd July. Manifestly the plaintiff adduced proof more elaborate than is usual in such suits because of the intervention of the Criminal Investigation Department and in particular he applied on the 27th April for summons on one Sheodutta Singh of Sheopurdiar. The suit came to trial on the 19th August and the plaintiff examined himself and four other witnesses to prove the transaction, two witnesses being Sheodutta Singh who deposed that he came with the defendant to Hazaribagh and Sant Singh also of Sheopurdiar who deposed that he had lent five rupees to the defendant to enable him to reach Hazaribagh in search of service, while the other evidence is to the effect that the defendant and his son did come to Hazaribagh and borrowed the sum of Rs. 19, though the entry in the plaintiff's book does not contain the signature or thumb-impression of defendant by way of acknowledgment. The defendant and a witness deposed that the defendant never visited Hazaribagh on the occasion mentioned and the Judge on a consideration of the evidence and the circumstances held that the transaction of loan alleged by the plaintiff had never taken place. We are informed that the Judge has been moved to make a complaint against the plaintiff of an offence under section 209 of the Indian Penal Code.

From a consideration of the facts set out and particularly of the action of the Court on the 14th February and succeeding dates and of the judgment, elaborate though it is, it is not possible to be satisfied that the proceedings were according to law. The procedure in his Court was incorrect, and though the decree might not be vitiated for that reason only, there is at least some reason to believe that his judgment

was, doubtless unconsciously, affected by the peculiar course which the proceedings took in his Court.

We accordingly make the rule absolute, set aside the decree and direct that the suit be retried *ab initio*. There is no other small cause court at Hazaribagh and at the suggestion of the learned Advocate for the plaintiff, with which the learned Government Advocate concurs on behalf of the defendant, we direct that the suit be transferred to the Court of Babu Umakanta Prashad Sinha, Munsif at Patna vested with the powers of a small cause court judge. The costs in this Court will abide the result.

The first letter of the Deputy Inspector-General set out that the suit was alleged to be fraudulent and that the District Magistrate was making enquiries and taking such action as was contemplated by letter no. 6 of 1906 and letter no. 995 of 1914 from the High Court and requested an adjournment. A similar procedure is said to have been followed in other cases in which enquiry was made by the Criminal Investigation Department. It is clear that the letters mentioned are no warrant for a correspondence between the Court and any third party to the litigation and the procedure must be designated as improper. The letter of 1906 merely contemplated that a judge who had come to the conclusion or perhaps who suspected that a claim was fraudulent, might avail himself of the services of the new Criminal Investigation Department to be set up in every province to which the Government of India would entrust the investigation and prosecution of offences in connection with the institution of groundless civil suits in courts situated at such a distance from the place of residence of the defendants that it was practically impossible for the latter to contest the claims satisfactorily. The letter of 1914 merely forwarded certain circulars of the Government of Bihar and Orissa to Commissioners of Divisions in connection with the same matter. The

1936.

BRAJNANDAN
SINGH
v.
RAMNATH
MALI.

COURTNEY
TERRELL,
C. J.,
MACPHER-
SON AND
FAZL ALI,
JJ.

1936.
 BRAJNANDAN
 SINGH
 v.
 RAMNATH
 MALL.
 COUBNEY
 TERRELL,
 C. J.,
 MACPHER-
 SON AND
 FAZL ALI,
 JJ.

most important of these dated the 24th November, 1913, prescribes the procedure for the guidance of District officers. A District officer having reasonable grounds to believe that such a fraudulent suit has been instituted shall cause a preliminary inquiry to be made through the Criminal Investigation Department with the object of ascertaining whether sufficient grounds exist for the institution of a criminal prosecution; if the result of the inquiry establishes the sufficiency of the grounds, he is to communicate with the Magistrate of the district in which the false suit has been instituted asking for the services of the Government Pleader and to get a power of attorney from the defendant which will enable the Government Pleader at the place of suit to appear for the defendant. It is stated that the procedure prescribed is already in force in the United Provinces.

The prescribed procedure makes no provision for the period during which the inquiry by the Criminal Investigation Department is proceeding. That department has apparently filled in the lacuna by asking the Court for a postponement of the trial. But intervention by a third party in a suit, however excellent the motive may be, is contrary to judicial principle—the contest is restricted to the parties or persons put forward under the usual procedure by the parties to represent them therein. Government or any authority designated by Government which is satisfied that intervention is required, cannot intervene at all except on formal authorization by the defendant to the Government Pleader or other pleader in that regard. Thus if a postponement of the trial is required to enable investigation to be made, Government or the authority designated by Government must seek it through the defendant and to that end may have to assist the defendant to enter appearance at a date before the investigating department is able to report definitely that the suit is in fact fraudulent; such action may perhaps be regarded as incidental to

the policy approved. Again the grant of postponement to the defendant is in the discretion of the Court and will be exercised upon consideration of the materials placed before the Court by the pleader empowered by the defendant to appear and act on his behalf.

It falls to be added that communications to the Court by letter or otherwise from third parties being improper, however laudable the motive may be, should not form part of the record. It goes without saying that under no circumstances should action be taken upon such a communication unless and until the Court has drawn to them the attention of the party who might be adversely affected and has heard such party, ordinarily in open Court.

Let the record be sent down forthwith so that the suit may be determined with the least possible delay.

Rule made absolute.

PRIVY COUNCIL.

NRISINGHA CHARAN NANDY CHOUHRY

v.

RAJNITI PRASAD SINGH.*

On Appeal from the High Court at Patna.

Sonthal Parganas Settlement (Amendment) Regulation (III of 1908), sections 5 and 5A—Mortgage suit—Mortgaged lands situated partly in Sonthal Parganas and partly in the Gaya District—Suit instituted in Court of Settlement Officer—Transfer of suit by Settlement Officer to District Judge, Gaya—Transfer by District Judge to Subordinate Judge of Gaya—authority of Settlement Officer to transfer—Jurisdiction of Subordinate Judge of Gaya.

A suit was instituted in the Court of the Settlement Officer of the Sonthal Parganas to enforce two mortgages. The major portion of the mortgaged properties was situated in the Sonthal Parganas and the remainder in the Gaya district.

* PRESENT: Lord Alness, Lord Roche and Sir Shadi Lal.

1936.

BRAJNANDAN

SINGH

v.

RAMNATH

MALL.

COURTNEY

TERRELL,

C. J.,

MACPHER-

SON AND

FAZL ALI,

JJ.

J. C.*

1936.

May, 4.