APPELLATE CIVIL.

Before Mr. Justice Maung Ba.

1927

June 28.

MA HTA YI

v.

MA PWA HNIT.*

Civil Procedure Code (Act V of 1908), O. 47—Grounds for revicw—When a error of law can be reviewed.

Where a Court wrongly applied in a case the principle of *res judicata* and then entertained a review in respect thereof.

Held, that the word "error" in Order 47, Rule 1 of the Civil Procedure Code, is not confined to an error of fact but also to an error on a point of law apparent on the face of the record, and therefore the lower Court was justified in reviewing its previous order.

Chhajju Ram v. *Neki*, 3 Lah. 137 P.C.; *Jatra Mohan Nedhu* v. *Aukil Chandra*, 24 Cal. 334; *Sharup Chand* v. *Pat Dassee*, 14 Cal. 627—*referred to.*

Po Aye—for Applicant.

MAUNG BA, J.—This revision application arises out of an application for leave to sue as a pauper.

Applicant, Ma Pwa Hnit, applied to the Subdivisional Court of Kyaiklat for leave to sue as a pauper for the recovery of a share of inheritance in the estate of her deceased husband. The learned Judge dismissed her application on the ground that she had no chance of succeeding in her claim. The learned Judge came to that finding in deciding the preliminary issue whether her petition disclosed any cause of action.

I shall not, however, go into the question whether the learned Judge's finding is correct or not. The point which I am called upon to decide is whether the order of the learned Additional District Judge, who reviewed his own order passed on appeal, is correct or not.

* Civil Revision No. 122 of 1927.

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About a year after the dismissal of that application, applicant filed a similar application in the District Court of Pyapôn. An objection was taken that the second application was barred by *res judicata* by reason of the previous application, which had been dismissed by the Subdivisional Court. The learned Additional District Judge allowed the objection to stand and held that her second application was barred by *res judicata*. The learned Judge was then asked to review that order passed by him. He decided that the law of *res judicata* was not applicable but that he should have dealt with the second application under Rule 15 of Order 33, Civil Procedure Code. He further held that a review could be granted where an error on a point of law was apparent on the face of the judgment.

From that order granting the review, the present application for revision has been filed. It is urged that a review cannot be granted on the ground that a previous interpretation of law was erroneous.

It is necessary to examine the language of Order 47, Rule 1 which difines the limits within which review of a decree or order is permitted. Those limits are three in number :—

(1) discovery of new and important matter or evidence, which, after the exercise of due diligence, was not within his knowledge or could not be produced at the time when the decree was passed or order made ;

(2) some mistake or error apparent on the face of the record, and

(3) for any other sufficient reason.

With regard to the first two cases, the language is plain enough, but with regard to No. (3) it is somewhat difficult to determine what reason should be considered sufficient. In the case of *Chhajju Ram* v. *Neki* (1), a

(1) (1922) 3 Lah. 127.

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Full Bench of the Privy Council has defined what that reason is. Viscount Haldane, who delivered the judgment of the Bench, at page 133 observed :— "For it is obvious that the Code contemplates procedure by way of review by the Court which has already given judgment as being different from that by way of appeal to a Court of Appeal. The three cases in which alone mere review is permitted are those of new material overlooked by excusable misfortune, mistake or error apparent on the face of the record, or 'any other sufficient reason'." At page 135, his Lordship further observed :—"They think that Rule 1 of Order XLVII must be read as in itself definitive of the limits within which review is to-day permitted, and the reference to practice under former and different statutes is misleading. So construing it they interpret the words 'any other sufficient reason' as meaning a reason sufficient on grounds at least analogous to those specified immediately previously."

So it is clear that out of the three grounds justifying a review, No. 3 is at least analogous with grounds 1 and 2. In the present case, the Additional District Judge in the first place applied wrong law. It therefore follows that there was an error of law apparent on the face of the record. It has been urged that the word "error" in Rule 1, Order 47 is restricted to an error of fact. The rule itself does not mention whether the word is to be thus restricted, so I do not think that the argument is maintainable because it would involve an importation of some words which do not appear in the Rule. That a review is allowable where an error on a point of law was apparent on the face of the record has been adopted in the case of *Sharup Chand* v. *Pat Dassee* (1) and *Jatra Mohan Nedhu* v. *Aukil Chandra* (2).

(1) (1887) 14 Cal. 627. (2) (1896) 24 Cal. 334.

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I therefore hold that the construction put by the learned Additional District Judge on Rule 1, Order 47, is correct and this application for revision must be dismissed.

APPELLATE CIVIL.

Before Mr. Justice Maung Ba.

1927

June 28.

KO SIT KAUNG AND ONE

v.

PERIAKARUPPAN.*

Civil Procedure Code (Act V of 1908), *s.* 39, *O.* 21, *rr.* 5, 6—*Transfer of decree for execution—Same Judge presiding over the two Courts in one place, effect of.*

Held, that where the same Judge presides over two Courts in the same place and has only one common clerical establishment, it is not material irregularity if the Judge without transferring a decree for execution from one such Court to the other in accordance with the provisions of Order 21, Rule 6 of the Civil Procedure Code, attaches property in execution of the decree of the former Court situate within the jurisdiction of the latter Court.

Prem Chand Dey v. *Mokhoda Debi*, 17 Cal. 699—*distinguished.*

Surti—for Applicant.

MAUNG BA, J.—In this revision case an interesting point of law has arisen.

The Subdivisional Judge of Twante in execution of a decree passed by him as Subdivisional Judge of Twante attached property which is situated within the local limits of the Subdivisional Court of Kyauktan without a previous transfer of the decree under Order XXI, Rule 6.

The Subdivisional Judge was asked to remove the attachment on the ground *inter alia* that the attachment was bad for want of jurisdicti on. The

* Civil Revision No. 95 of 1927.