

## REVISIONAL CIVIL.

Before Mr. Justice LeRossignol.

FARIDA (PLAINTIFF)—*Petitioner,*

*versus*

KHAIRA AND HASHAM (DEFENDANTS)—

*Respondents .*

Civil Revision No. 558 of 1921.

1922

Jan. 4.

*Revision—order rejecting an application for restoration of a case dismissed for default—lower Court disbelieving the plaintiff's evidence as to illness—whether revision is competent.*

The plaintiff brought a suit for pre-emption, but absented himself on the day of hearing and the lower Court dismissed his suit for default. The plaintiff then put in an application for the restoration of the case alleging that his absence was unavoidable by reason of an attack of colic. The lower Court, disbelieving his evidence, dismissed his application. The plaintiff thereon made a petition for revision to the High Court.

*Held,* that the lower Court's order rejecting the application for restoration was correct and that in any case there was no scope for revision as the Court could not be said to have acted illegally or with material irregularity.

*Revision from the order of Sardar Harnam Singh, Munsif, 1st Class, Zira, District Ferozepore, dated the 13th June 1921, rejecting the application for restoration.*

ABDUL GHANI, for Petitioner.

M. HASSAN, for Respondents.

LEROSSIGNOL, J.—The Court below has disbelieved the evidence that the plaintiff was unable to appear on the date fixed by reason of an attack of colic and it has refused to set aside the order of dismissal of the suit for default.

I fail to see how the Court below can be said to have acted illegally or with material irregularity. On the contrary, it appears to have had good reason for rejecting the plaintiff's story.

If plaintiff was ready to go on with the case and was absent only for a few minutes, why did he not apply to the Court at once instead of on the next day? His witnesses say they were present and heard the case called. Why did they not go and call the plaintiff?

It is significant that on the day fixed for the hearing plaintiff had called no witnesses at all through the Court.

The Munsil's order was correct: in any case, there is no scope for revision. I dismiss the petition with costs.

A. N. C.

*Revision dismissed.*

## APPELLATE CIVIL.

*Before Mr. Justice Scott-Smith and Mr. Justice Harrison.*

MUSSAMMAZ JAWAI—(DEFENDANT)—*Appellant,*

*versus*

HUSSAIN BAKHSH AND OTHERS—(PLAINTIFFS)—

*Respondents.*

Civil Appeal No. 2726 of 1918.

*Muhammadan Law—Succession—shares vest in the heirs at the moment of ancestor's death—and if an heir dies before distribution his share goes to his heirs—Plaintiffs entitled to a decree for their share only.*

*Held, that under Muhammadan Law, a "vested inheritance" is the share which vests in an heir at the moment of the ancestor's death. If the heir dies before distribution the share of the inheritance which has vested in him will pass to his heirs at the time of his death. The shares have, therefore, to be determined on the occasion of each death.*

\* Mulla's Principles of Muhammadan Law, article 45 (fourth edition), referred to.

1921

Dec. 22.