CIVIL REVISION.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Mya Bu.

1932

Nov. 29.

MOHAMED CHOOTOO AND OTHERS
v.
ABDUL HAMID KHAN AND OTHERS.*

Revision—Interlocutory order—Grounds for intervention—Civil Procedure Code (Act V of 1908), s. 115.

The High Court has jurisdiction under s. 115 of the Civil Procedure Code to revise an interlocutory order passed by a subordinate Court from which no appeal lies to the High Court.

The Court will, however, revise an interlocutory order only when irremediable injury will be done, and a miscarriage of justice will ensue if the Court held its hand.

Salam Chand v. *Bhagwan Das*, I.L.R. 53 Cal. 767—*referred to.*

P. B. Sen for the applicants. In this case the District Judge has rejected an application for leave to amend the plaint on the ground that it purported to set up a new cause of action. Though this is an interlocutory order it has the effect of deciding an important point of law, namely, the applicability of article 123 of the Limitation Act to the facts of the case. The High Court ought to interfere in revision under s. 115 of the Civil Procedure Code; otherwise, as pointed out in *Salam Chand* v. *Bhagwan Das* (1), an irremediable injury will be done and a miscarriage of justice will inevitably ensue. Whether the High Court will interfere in revision or relegate the parties to a separate suit depends upon the facts of each case. *Indubhushan Das* v. *Haricharan Mandal* (2). But where grave injustice otherwise will be done, High Courts will revise even interlocutory orders. See *L.P.K. Chettyar Firm* v. *R. K. Bannerji*

* Civil Revision No. 67 of 1932 from the order of the District Court of Tharrawaddy in Civil Regular No. 15 of 1930.

(1) I.L.R. 53 Cal. 767, 775. (2) I.L.R. 58 Cal. 55.

(1); *Ma Mya Thin* v. *Ma Chu* (2); *Maung San Shwe* v. *Haji Ko Ishaq* (3).

Kyaw Myint for the respondents was not called on.

PAGE, C.J.—This application must be dismissed. The suit was determined by the learned District Judge of Tharrawaddy upon a preliminary issue relating to limitation.

On appeal to the High Court it was held that the ground upon which the learned District Judge decided the suit was not sustainable, but the Court did not determine whether the suit was otherwise barred by limitation or not. The proceedings were remanded to the District Court of Tharrawaddy to be determined upon the merits according to law. The High Court in the remand order observed: "The difficulties that have resulted in this appeal are to some extent due to the inartistic form in which the plaint is drawn. The substance of the claim as set out in the plaint, however, appears to be what I have stated. In those circumstances, in my opinion, article 123 of the Limitation Act has no application. . . . . The learned advocate for the appellants states that when the proceedings are returned to the District Court he will prefer an application for leave to amend the plaint in order to make clear what the claim is. Whether such an application ought to succeed or not is a matter to be determined by the learned District Judge."

After the proceedings had been returned to the District Court of Tharrawaddy, an application was made on behalf of the plaintiff for an amendment of the plaint. The particular amendments in that application

(1) I.L.R. 9 Ran. 71. (2) I.L.R. 9 Ran. 86.
(3) I.L.R. 9 Ran. 92.

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did not commend themselves to the learned District Judge, and an order was passed that the application for amendment in the form in which it was filed should be dismissed, without prejudice to the right of the plaintiff to prefer a further application to amend the plaint.

From that order an application in revision has been preferred pursuant to section 115 of the Civil Procedure Code.

In my opinion the High Court has jurisdiction under section 115 to revise an interlocutory order passed by a Subordinate Court from which no appeal lies to the High Court. But, as I ventured to point out in *Salam Chand Kannyram* v. *Bhagwan Das Chilhama* (1),

"in my opinion, it is only when irremediable injury will be done, and a miscarriage of justice inevitably will ensue if the Court holds its hand, that the Court ought to intervene in current litigation, and disturb the normal progress of a case by revising an interlocutory order that has been passed by a subordinate Court".

In my opinion the Court ought not to grant the application now under consideration. *Non constat* that when the case is heard by the District Court the plaintiff will succeed. On the other hand, if the plaintiff's suit is dismissed the order rejecting the application for amendment now under consideration can be challenged in an appeal from the decree.

For these reasons, in my opinion, the application must be dismissed with costs, four gold mohurs.

MYA BU, J.—I agree.

(1) (1926) I.L.R. 53 Cal. 767 at p. 775.