

REVISIONAL CIVIL.

Before Mr. Justice Addison and Mr. Justice Coldstream.

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SANT SINGH (PLAINTIFF) Petitioner

versus

Nov. 14.

MUBARAK SINGH AND OTHERS (DEFENDANTS)

Respondents.

Civil Revision No. 35 of 1926.

Civil Procedure Code, Act V of 1908, section 115 (c)—Revision—jurisdiction—erroneous decision on law point—whether constitutes illegal exercise of jurisdiction.

The plaintiff, relying upon an oral assignment of a debt, sued for its recovery, but the Appellate Court, though recognising that the Transfer of Property Act is not in force in the Punjab, applied the principles of sections 130 and 131 of that Act, and held that the oral assignment was invalid, whereupon the plaintiff, in reliance upon *Teja Singh v. Kalyan Das-Chet Ram* (1), (a case decided subsequently by the High Court) petitioned the High Court under section 115 (c) of the Civil Procedure Code for revision of the Appellate Court's judgment, dismissing his suit.

Held, that as the Court below with jurisdiction to decide the appeal, had done so, and had not deliberately refused to follow the High Court's decision (the case of *Teja Singh v. Kalyan Das-Chet Ram* (1), not having been decided at the time), the mere fact that a conclusion erroneous in law or fact had been arrived at did not enable the petitioner to move the High Court in revision under section 115 (c) of the Civil Procedure Code, on the plea that the lower Court had acted in the exercise of its jurisdiction illegally or with material irregularity; for Courts have jurisdiction to decide wrong as well as right.

Teja Singh v. Kalyan Das-Chet Ram (1), disapproved, *pro tanto*.

Malkarjun v. Narhari (2), *Rajwant Prasad Pande v. Ram Rattan Gir* (3), and *Amir Hasan Khan v. Sheo Bahsh Singh* (4), followed.

(1) (1925) I.L.R. 6 Lah. 487.

(3) (1915) I.L.R. 37 All. 485 (P.C.).

(2) (1901) I.L.R. 25 Bom. 337 (P.C.). (4) (1885) I.L.R. 11 Cal. 6 (P.C.).

Application for revision of the decree of Malik Ahmadyar Khan, Senior Subordinate Judge, Rawalpindi, dated the 2nd April 1925, reversing that of Sheikh Muhammad Hussain, Subordinate Judge, 4th Class, Rawalpindi, dated the 12th November 1924, and dismissing the plaintiff's suit.

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GOBIND RAM, KHANNA, for Petitioner.

FARKASH CHANDRA, for SHAMAIR CHAND, for Respondents.

JUDGMENT.

ADDISON J.—Defendant No. 3 gave Rs. 300 to defendant No. 1 for payment to defendant No. 2. This was in 1919. Defendant No. 1 did not pay the amount and defendant No. 3 orally assigned the debt to plaintiff who sued for the amount with interest. The appellate Court applied the principles of the Transfer of Property Act which is not in force in the Punjab and held that the oral assignment of the debt was invalid. Against its decree dismissing the suit this revision has been preferred.

ADDISON J.

The learned Judge who admitted the petition doubted whether interference was warranted by the terms of section 115 of the Civil Procedure Code, but since a similar case *Teja Singh v. Kalyan Das-Chet Ram* (1), had been reported, he admitted the petition and directed it to be heard by a Division Bench.

It was held in *Teja Singh v. Kalyan Das-Chet Ram* (1) that although the equitable principles underlying the Transfer of Property Act are followed in the Punjab, the Act itself with its technicalities does not apply and an oral assignment of a debt for consideration is consequently not invalid. There was

(1) (1925) I. L. R. 6 Lah. 487.

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practically no discussion of the question whether the Order could be revised under section 115 of the Civil Procedure Code. All that was said by the learned Judge was that the Subordinate Judge committed an irregularity in relying upon that Act to dismiss on a purely technical point a claim which he otherwise held to be just and equitable.

Most of the cases cited before us had reference to the refusal of jurisdiction or the assumption of jurisdiction by a Court. These fall within sub-clauses (a) and (b) of section 115. It was admitted that, if a revision lay in the present case, this would be by virtue of sub-clause (c) and not sub-clause (a) or (b). It has therefore to be decided whether the appellate Court acted in the exercise of its jurisdiction illegally or with material irregularity. It was further admitted that, where a Court has jurisdiction to determine a question and it has determined that question, it cannot be said to have acted illegally or with material irregularity because it has come to an erroneous decision either in fact or in law; but it was argued that the appellate Court acted illegally in the exercise of its jurisdiction in relying upon the principles of an Act which was not in force in the Punjab.

The leading case on the subject is *Amir Hasan Khan v. Sheo Baksh Singh* (1). This was a decision under sub-clause (c). Their Lordships of the Privy Council said: "The question then is, did the judges of the lower courts in this case in the exercise of their jurisdiction act illegally or with material irregularity? It appears that they had perfect jurisdic-

tion to decide the question which was before them (namely, whether the suit was barred as *res judicata*) and they did decide it. Whether they decided it rightly or wrongly they had jurisdiction to decide the case; and even if they decided it wrongly they did not exercise their jurisdiction illegally or with material irregularity." It is clear from this decision that erroneous decisions in law or fact do not come within the purview of section 115 of the Civil Procedure Code. Another decision of their Lordships is *Malkarjun v. Narhari* (1), where it was said: "It (the lower court) made a sad mistake, it is true, but a court has jurisdiction to decide wrong as well as right." The latter decision was approved by their Lordships of the Privy Council in *Rajwant Prasad Pande v. Ram Rattan Gir* (2).

There are decisions of the various High Courts on this question which appear to be difficult to reconcile. No useful purpose will be served by referring to them, as the leading authorities of the Privy Council are set out above.

There are numerous decisions of this Court in which different principles of the Transfer of Property Act have been applied although the Act is not in force in the Punjab. The appellate Court in the present case has distinctly stated that the Act was not in force, but it proceeded to apply the principles of sections 130 and 131 of the Transfer of Property Act as other principles had been followed in the Punjab. The only question is whether in doing so it acted illegally or with material irregularity in the exercise of its jurisdiction. I do not think so. The

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appellate Court was the final authority to decide the question before it and it had jurisdiction to decide it. This is not a case where the appellate Court deliberately refused to follow a decision of this Court for *Teja Singh v. Kalyan Das-Chet Ram* (1) had not been decided when it gave its decision. It had jurisdiction to decide the question whether the oral assignment of the debt was invalid and if it erroneously decided it, it cannot be said to have acted illegally or with material irregularity in the exercise of its jurisdiction. It had jurisdiction to decide wrong as well as right and its decision cannot be challenged in revision.

In my judgment, therefore, no revision lies and I would dismiss the petition with costs.

COLDSTREAM J.

COLDSTREAM J.—I agree.

*N. F. E.**Revision dismissed.*

(1) (1925) I. L. R. 6 Lah. 487.