APPELLATE CIVIL.

Before Mr. Justice Baguley, and Mr. Justice Sharpe.

1937

Aug. 16.

MOHAMED HAJEE VALLI MAHOMED

v.

VEDNATH SINGH AND OTHERS.*

Appellate Court's power to deal with evidence—Conflict of oral evidence—Judgment of High Court on Original Side—Judgments of subordinate Courts.

The principle laid down in *Chinnaya* v. *U Kha* is that where there is a conflict of oral evidence, and the issue in the case depends upon the credibility of the witnesses, the High Court will not, in its appellate jurisdiction, when the appeal is one from the Original Side of the Court, interfere with such a decision unless it comes to the conclusion that the Judge on the Original Side was plainly wrong.

This principle is not however necessarily applicable to findings of fact by all Courts in this country. An appellate Court is not bound to follow this principle in dealing with appeals from the decisions of Courts inferior to the High Court.

Chinnaya v. *U Kha*, I.L.R. 14 Ran. 11, explained.

Foucar (with him *Soorma*) for the appellant.

Hay (with him *Shukla*) for the 1st and 2nd respondents.

The suit was brought in the District Court of Toungoo under Order 21, rule 63 of the Civil Procedure Code and also under s. 53 of the Transfer of Property Act by the plaintiffs to obtain a declaration that a transaction in a certain registered sale deed was fraudulent, collusive and *benami* and that the property the subject matter of the sale deed was liable to attachment and sale in execution of a certain decree. The District Court passed the decree as prayed and one of the defendants brought this appeal. The appeal involved a pure question of fact and the High Court after considering the evidence confirmed the judgment of the District Court but varied somewhat

* Civil First Appeal No. 175 of 1936 from the judgment of the District Court of Toungoo in Civil Regular No. 13 of 1934.

the order as to costs. There was a conflict of evidence, and the Court's attention was drawn to the case of *Chinnaya* v. *U Kha*, reported at 14 Rangoon, page 11. The present report is confined to the consideration and applicability of the principle laid down in that case.

SHARPE, J.—[After setting out the facts of the case and discussing the evidence continued :] In the course of my consideration of this case I have naturally given some thought as to the correct way in which this Court should approach an appeal such as the present one, which, as it now appears, involves really a pure question of fact. I am familiar with the principle established both by the recent (English) House of Lords case of *Powell* v. *Streatham Manor Nursing Home* (1), and the earlier (Scotch) House of Lords case of *Clarke* v. *Edinburgh Tramways Co.* (2). I have therefore deemed it right to investigate how far, if at all, the principle laid down in those two cases has any application to Burma. I have only found one Rangoon decision touching upon the subject, and that is the recent case of *Chinnaya* v. *U Kha* (3), wherein Lord Shaw's speech in the House of Lords in the above-mentioned Scotch case was referred to by Sir Arthur Page, the then Chief Justice, who held, and with whose judgment Mr. Justice Mya Bu agreed, that the principles enunciated in that decision ought to be applied by this Court at the hearing of appeals from decrees or orders passed by learned Judges sitting on the Original Side of the Court.

I have looked carefully at this Rangoon case and I would take this opportunity of pointing out that the head-note in that case goes too far and appears to lay down a general rule for appellate Courts, no matter

(1) (1935) A.C. 243. (2) (1916) S.C. (H.L.) 35.
(3) (1935) I.L.R. 14 Ran. 11.

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what the tribunal from which the appeal is brought. A perusal of the judgment, however, shows that the final sentence in the head-note should read:

"This High Court will not, in its appellate jurisdiction, when the appeal is one from the Original Side of the Court, interfere with such a decision unless it comes to the conclusion that the Judge on the Original Side was plainly wrong."

As I have said, I can find no other Rangoon decision dealing with the English principles to which I have referred. Doubtless some day it will be necessary for this Court to lay down the principles which should guide it on the hearing of an appeal from the decision of a District Judge upon a question of fact only, but so far no such principles have been laid down. Fortunately, perhaps, it is unnecessary for us to lay down any such principles in the present case; we need not do so because there is sufficient material upon which we can ourselves decide the only question of fact which it is necessary to have decided, and because, after a long and careful consideration of all the evidence in the case (except exhibits E, F and G to which I will refer again in a moment) we have no doubt as to the correctness of the learned District Judge's decision of the question.

[The judgment concluded with the findings and the order for costs.]

BAGULEY, J.—I agree with the order proposed by my brother in the main judgment in this case. I only wish to add one comment with regard to *Chinnaya* v. *U Kha* (1). In this case the late Chief Justice laid down that this Court while hearing appeals from the Original Side should follow the rule laid down in *Powell* v. *Streatham Manor Nursing Home* (2). He went no further than that. It must be remembered that the

(1) (1935) I.L.R. 14 Ran. 11. (2) (1935) A.C. 243.

House of Lords was dealing with a class of appeals arising from cases tried either by the High Court in England or by the County Courts, Court swhich are presided over by members of the Bar of proved ability who have had years of experience before they are appointed : in the same way that Judges of this Court are appointed. It is clear that findings of fact by Judges of that description have got to be dealt with on different lines from findings of fact arrived at, perhaps, by Township Judges who may be appointed almost direct from the University. These Judges have not always the experience nor perhaps the ability of County Court Judges or High Court Judges, and it seems clear to me that their decisions on points of fact or the credibility of evidence can never be regarded as having the same weight as findings to which the late Chief Justice was referring. The case of *Chinnaya* v. *U Kha* (1) does not lay down a rule applicable to findings of fact by all Courts in this country.

(1) (1935) I.L.R. 14 Ran. 11.