

CIVIL REVISION.

Before Mr. Justice Mya Bu, and Mr. Justice Mosely.

RAM OUDH

v.

THE GOVERNMENT OF BURMA.*

1939

Jan. 31.

*Revision—Rejection of evidence by trial Court—Revision of interlocutory order—
Civil Procedure Code, s. 115.*

An application for revision on the ground that evidence is being, or will be, rejected by the trial Court does not lie. An interlocutory order may decide a case and may be subject to revision if it does irreparable damage to a party, but that cannot be said in the case of rejection of evidence.

Isa Adam v. Bai Mariam, 29 Bom. L.R. 304, referred to.

Thein Maung (Advocate-General) for the Crown. The application in revision does not lie. All that the trial Court has done is to exclude a certain piece of evidence; the suit has not been decided. *Isa Adam v. Bai Mariam* (1). Applications of this nature should not be encouraged, otherwise the High Court will be flooded with all kinds of revision applications in interlocutory matters and the progress of suits will be considerably hampered. The High Court will interfere in interlocutory matters only if irreparable injury would otherwise be caused. *Mohamed Chootoo v. Abdul Hamid Khan* (2); *K.P.L.S.S. Chettyar v. The Official Receiver, Ramnad* (3).

K. C. Bose for the applicant. This case stands on a different footing. By shutting out the evidence the whole nature of the suit has been altered. The whole case is based on fraud and to shut out evidence of fraud is to deny justice.

* Civil Revision No. 327 of 1938 from the order of the Assistant District Court of Meiktila in Civil Regular No. 5 of 1938.

(1) 29 Bom. L.R. 304.

(2) I.L.R. 11 Ran. 36.

(3) I.L.R. 13 Ran. 595.

1939
 RAM OUDH
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MOSELY, J.—This is an application under section 115 of the Civil Procedure Code for revision of a decision of the learned Additional District Judge of Meiktila on a preliminary issue in a suit. The issue was in substance as follows :

Whether the terms of tenancy as embodied in the deed of lease can in law be subject to a condition precedent that in reality the lease will be for ten years at a time and not for a period of five years as inserted in the deed of lease ?

The learned Additional District Judge said that no question of a condition precedent arose but that the oral agreement sought to be proved was not a matter on which the document was silent or inconsistent with its terms and could not be included under proviso (2).

A preliminary objection by the learned Advocate-General is that this application for revision will not lie. I do not think that this Court or any other High Court has ever entertained an application for revision on the ground that evidence is being, or will be, rejected by the trial Court. A decision is quoted by the learned Advocate-General which is in exact point : *Isa Adam v. Bai Mariam* (1). No doubt an interlocutory order may decide a case and may be subject to revision if it does irreparable damage to a party, but that cannot be said in the case of rejection of evidence. It is open to the party to question the decision in appeal which is the proper time at which the error, if any, should be remedied.

It cannot be said here either that the trial Court has not applied itself to the matter. A mere error of law on a question which the Court has jurisdiction to decide will not in itself be a ground for interference in revision.

It is said for the petitioner that the plaintiff's case was really based on fraud and that if an issue were

(1) 29 Bom. L.R. 304.

framed on fraud this evidence will be admissible. That may or may not be so, but it is not a matter before this Court and it is not a matter decided by the trial Court. This application in revision must, therefore, be dismissed with costs—advocate's fee, three gold mohurs.

1939
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 MOSKLY, J.

MYA BU, J.—I agree.