

LETTERS PATENT APPEAL.*Before Shadi Lal C. J. and Broadway J.*

GUJAR MAL-KUNDAN LAL (DEFENDANTS)

1933

Appellants

Feb. 20.

versus

NANAK CHAND-KALU MAL

(PLAINTIFFS)

FATEH MUHAMMAD AND

OTHERS (DEFENDANTS)

} Respondents

Letters Patent Appeal No. 136 of 1927.

Provincial Small Cause Courts Act, IX of 1887, Section 15, Second Schedule, Article 26—Civil Procedure Code, Act V of 1908, Section 73: Unclassed suit—Appeal—Second appeal—competency of—Order XLVII, rule 1: Review on ground of mistake or error apparent on the face of the record.

The dismissal by the Subordinate Judge, 3rd Class, of an “ unclassified ” suit was confirmed by the Senior Subordinate Judge on appeal by the plaintiff, who thereupon made a petition to the High Court for revision, which, though holding that the judgments of the Lower Courts were wrong in law, ruled that an error of law did not amount to a material irregularity as contemplated by the law of revision, and on the erroneous ground that no second appeal lay, and that the High Court had, therefore, no jurisdiction to entertain the petition, dismissed it. This order of dismissal was subsequently reversed on review, on its being discovered that as a matter of fact a second appeal to the High Court was competent.

Held, that as the suit was an “ unclassified ” one, *vide* Article 26 of the Second Schedule of the Provincial Small Cause Courts Act, and its value for purposes of jurisdiction being over Rs. 100, the Senior Subordinate Judge had no jurisdiction to hear the appeal.

Held further, that a second appeal was competent.

And, that the order of the High Court had been rightly reviewed and set aside on the ground of error of law apparent on the face of the record.

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Murari Rao v. Balavanth Dikshit (1), followed.*Chhajju Ram v. Neki* (2), distinguished.GUJAR MAL-
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Appeal under clause 10 of the Letters Patent from the judgment of Jai Lal J. dated the 9th June, 1927, passed in C. A. No. 3010 of 1926, reversing that of Lala Dwarka Parshad, Senior Subordinate Judge, Ambala, dated the 18th August, 1925, and that of Lala Kishan Chand, Subordinate Judge, 3rd class, Ambala, dated the 26th May, 1925, and decreeing the plaintiffs' suit.

MEHR CHAND MAHAJAN, for Appellants.

JAGAN NATH AGGARWAL and ASA RAM AGGARWAL,
for Plaintiffs-Respondents.

SHADI LAL C. J.

SHADI LAL C. J.—The plaintiffs, who were dissatisfied with an order for rateable distribution under section 73, Civil Procedure Code, brought the action, which has given rise to this appeal, to compel a refund of the assets which according to them had been improperly distributed. Their suit was dismissed by the Subordinate Judge of the 3rd Class. Against the decree dismissing the suit, they preferred an appeal to the Senior Subordinate Judge, who concurred with the Court of first instance and dismissed the appeal. Thereupon, they preferred an application for revision to the High Court which was rejected by Jai Lal J., who, while holding that the judgment sought to be revised was wrong in law, dismissed the application on the ground that an error of law did not amount to a material irregularity as contemplated by the law of revision.

The plaintiffs then realised that the suit instituted by them was, not a small cause suit, but an unclassified one, *vide* Article 26 of the Provincial Small Cause

(1) (1923) I. L. R. 46 Mad. 955. (2) (1922) I. L. R. 3 Lah. 127 (P. C.).

Courts Act; and that a second appeal lay to the High Court. They accordingly made an application to the learned Judge for a review of his judgment rejecting the application for revision, and asking him to treat the latter application as a memorandum of second appeal. The learned Judge granted the review on the ground that there was a mistake or error apparent on the face of the record, and, after setting aside his order rejecting the application for revision he heard the case as a second appeal and granted a decree to the plaintiffs.

The defendants have preferred the present appeal under Clause X of the Letters Patent, and it is urged before us that the Single Judge had no jurisdiction to grant the application for review. The learned counsel for the appellants places his reliance upon the judgment in *Chhajju Ram v. Neki* (1), which lays down the rule that "any other sufficient reason," which under Order 47, rule 1 of the Civil Procedure Code, constitutes a valid ground for granting a review, means a reason sufficient on grounds at least analogous to those specified immediately previously; and contends that in the present case the grounds for review did not satisfy that condition. But as pointed out above, the learned Judge granted the review, not on the ground of any other sufficient reason, but on that of mistake or error apparent on the face of the record. As explained by him, when he made the order rejecting the application for revision, "the pleaders on both sides and myself were under a misapprehension as to the nature of the jurisdiction that I was exercising, otherwise I would have granted the relief prayed for. In fact I had no jurisdiction to entertain the application

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for revision." He followed the judgment in *Murari Rao v. Balavanth Dikshit* (1), in which the application for review was granted on the ground of error of law apparent on the face of the record. After hearing arguments on both sides, I am not prepared to dissent from the conclusion of the learned Judge and to hold that he was not justified in granting the review.

The learned counsel for the appellants also contends that, as the suit was an unclassed one, and its value for purposes of jurisdiction was Rs. 332, the Senior Subordinate Judge had no jurisdiction to hear the appeal from the decree of the Court of first instance. This contention is well-founded, and the learned counsel for the respondents frankly admits that the judgment of the Senior Subordinate Judge was *coram non judice*.

I would accordingly accept the appeal and setting aside the judgment of the Single Judge as well as that of the Senior Subordinate Judge, direct the latter to return the memorandum of appeal to the plaintiffs for presentation to the proper Court. The parties are directed to bear their own costs in this Court.

BROADWAY J.

BROADWAY J.—I concur.

N. F. E.

Appeal accepted.