## APPELLATE CIVIL.

*Before Harrison and Addison JJ.*

1932

*Feb. 22.*

DEBI DAS (DEFENDANT) Appellant

*versus*

JAINI MAL (PLAINTIFF) Respondent.

**Civil Appeal No. 1413 of 1927.**

*Civil Procedure Code, Act V of 1908, Order XLI, rule 27: Additional evidence in Appellate Court—necessity of inquiry before it is admitted.*

*Held*, that the calling of additional evidence by the Court of appeal, merely on the application of Counsel for the Appellant, without considering first whether in the case as it stands there is any *lacuna* or defect, or whether judgment could or could not be pronounced without such additional evidence, is improper. It is only when the conditions laid down in Order XLI, rule 27 of the Code of Civil Procedure are found to exist that a Judge is entitled to call for additional evidence.

*Parsotim Thakur* v. *Lal Mohar Thakur* (1), followed.

*Indrajit Pratap Sahi* v. *Amar Singh* (2), disapproved.

*Second appeal from the decree of* Lala *Ghanishyam Das, Additional District Judge, Delhi, dated the 4th March, 1927, reversing that of* Lala *Parshotam Lal, Subordinate Judge, 2nd Class, Delhi, dated the 11th March, 1926, and granting the plaintiff a decree for Rs. 2,800.*

NAWAL KISHORE and AJIT PARSHAD, for Appellant.

BISHEN NARAIN and BASANT KRISHEN, for DEV RAJ SAWHNEY, for Respondent.

The judgment of the Court was delivered by :—

HARRISON J.—The plaintiff in this case sued upon a promissory note and was met by the plea of

(1) (1931) I.L.R. 10 Pat. 654, 669. (2) (1923) I.L.R. 2 Pat. 676.

the minority of the defendant at the time of execution.

The trial Court, after hearing the evidence, came to the conclusion that the plea was true, that the defendant was a minor at the time the promissory note was executed. It accordingly dismissed the suit.

On appeal the learned Additional District Judge reversed this finding and gave the plaintiff a decree for the full amount claimed, namely, Rs. 2,800.

On second appeal it is urged that the above finding of the Additional District Judge is entirely based upon additional evidence, which he permitted to be called, on an application presented to him by the plaintiff-appellant. Counsel contends that the ruling recently delivered by their Lordships of the Privy Council *Parsotim Thakur* versus *Lal Mohar Thakur* (1)—lays down that this evidence should not have been admitted, inasmuch as the Court did not act in the manner prescribed in the Code and did not come to the conclusion which alone would justify the passing of such an order. Counsel further contends that, in consequence of taking this evidence, the Judge's attitude towards the remainder of the evidence became unduly suspicious and that he rejected the whole of the material on which the trial Court had come to its conclusion regarding the age of the defendant and did so because he accepted this additional evidence and, not only accepted it, but attached a value to it, which it never possessed. When examined, it will be found that this evidence is of no value whatever, as it merely recited that a son of Damodar Das had died

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in Delhi on a certain date. Damodar Das is an extremely common Hindu name and particularly common in the vast city of Delhi.

The first point to be decided is whether the Additional District Judge should have admitted this additional evidence. Counsel for the respondent endeavours to support the action taken on the application put in to the Additional District Judge by a Delhi counsel. It is there stated that the trial Court had called the original evidence of the registers and the clerk, who explained them, after the conclusion of the arguments, and the Court is given to understand that the plaintiff knew nothing about this evidence, which was taken behind his back. The minute grain of truth is that the evidence was taken after a portion of the argument had been heard. The case was argued more than once, certainly twice and possibly three times. It was after one of the unfinished arguments had been broken off that this additional evidence of the registers and the clerk was called. This evidence was taken in open Court. Counsel for the plaintiff cross-examined the clerk at length and four days later argued the case on the whole of the evidence. Another counsel was then engaged to put forward the application, which does not stop short at misrepresentation and includes deliberate misstatements. The argument, therefore, that the Additional District Judge was justified in calling additional evidence on improper or insufficient grounds, because the trial Court had acted in a similar way, falls to the ground, the action of the trial Court having been perfectly correct throughout. In calling for this additional evidence the Additional District Judge did not apparently consider whether there was any inherent

*lacuna* or defect and whether he could or could not pronounce judgment without it. He called it on the application of the counsel without, perhaps, considering the matter deeply or coming to any conclusion as to whether the provisions of the Code were being strictly observed. As laid down in *Parsotim Thakur* versus *Mohar Thakur* (1), there previously existed some doubt as to the meaning of the incidental remarks in an earlier judgment, *Indrajit Pratap Sahi* versus *Amar Singh and others* (2). Those doubts have now been set at rest and it has been clearly explained that the loose practice, which has grown up in the past, must cease, and that it is only when the conditions laid down in Order XLI, rule 27, Civil Procedure Code, are found to exist that a Judge is entitled to call for additional evidence. This will occur very rarely.

Putting aside this additional evidence, worthless as it is, and considering the case as a whole as it presented itself to the trial Court, the finding that the defendant was a minor at the time the document was executed is based on evidence which we can see no reason to reject. There is the evidence of the mother of the minor, of the father-in-law of *Rai Bahadur* Amba Parshad, of the registers and of the clerk who explained them. The entry, on which the Subordinate Judge has relied, being an old entry is very much more valuable than such entries are at present, for it gives not only the name of the father but also the name of the grandfather and it is clear that it does refer to the family of the defendant. We think the Additional District Judge has been unduly impressed by the evidence which should not have been admitted and has attached an undue value to it, which has prejudiced

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him in considering the statements of the witnesses named above. In our opinion, the finding of the trial Court must be restored and the suit dismissed with costs throughout.

The cross-objections are also dismissed with costs.

*N. F. E.*

*Appeal accepted.*

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**APPELLATE CIVIL.**

*Before Harrison and Addison JJ.*

1932

*March 15.*

ABDUL HAQ (PETITIONER) Appellant

*versus*

SHIROMANI GURDWARA PARBANDHAK COMMITTEE AND ANOTHER (DEFENDANTS) Respondents.

**Civil Appeal No. 1439 of 1929.**

*Punjab Land Revenue Act, XVII of 1887, section 44: Revenue Records—presumption of truth*—Jamabandi—*primary authority as regards title—not cancelled by entries in* Muafi *Register—Position of a Muafidar—explained.*

*Held*, that the primary authority on title consists of the *Jamabandis*, and their value is very much greater than that of any entry in any *Muafi* Register. Where the entries in all the *Jamabandis* from 1851 onwards consistently shewed the *Mahant* for the time being as the owner of the land in suit, entries in the *Muafi* Register of 1856 describing the land as " attached to the Gurdwara or temple of the Sikhs, dedicated ..... " etc. and " to be maintained during the continuance of the Gurdwara," could not be accepted as cancelling or reversing the entries in the *Jamabandis*.

*Held also*, that a *Muafidar* is not necessarily, though in fact he often is, the owner of the land exempted from the payment of revenue.