

which will have to be considered hereafter. At present the only question that has arisen is, whether the District Judge could pass an order against the respondents for the payment of the amount claimed by the liquidator. I feel no doubt that he has jurisdiction and consequently I accept this appeal, set aside the order of the District Judge and direct him to proceed with the application of the liquidator on its merits. The costs of this appeal shall abide the result.

A. N. C.

Appeal accepted.

REVISIONAL CIVIL.

Before Bhide J.

MUHAMMAD HASHAM KHAN (DEFENDANT)

Petitioner

versus

MUHAMMAD JAN KHAN (PLAINTIFF)

Respondent.

Civil Revision No. 191 of 1933.

Civil Procedure Code, Act V of 1908, Sections 96, 115: Revision—competency of—on point of construction of a power-of-attorney—Indian Oaths Act, X of 1873—Decree passed in consequence of an agreement to be bound by defendant's statement on oath—whether a consent decree.

A suit on behalf of a minor under the guardianship of the Court of Wards was conducted by one *F. B.* who was granted a power-of-attorney by the Deputy Commissioner for the purpose. During the pendency of the suit *F. B.* agreed to be bound by the statement of the defendant on oath on the point at issue. The oath was taken and the suit was dismissed. On appeal the Senior Subordinate Judge upheld the contention of the plaintiff that the power-of-attorney given to *F. B.* did not authorise him to bind the minor by the oath of the defendant and remanded the suit for retrial. The defendant came up to

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SRI GANESH
COMPANY,
LIMITED,
MUKTSAR (IN
LIQUIDATION)

v.
JIWAN RAM-
GANGA SAHAI.

JAI LAL J.

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the High Court in revision and contended that the interpretation placed by the Senior Subordinate Judge on the power-of-attorney was incorrect.

Held, that this was not a sufficient ground for revision under section 115 of the Civil Procedure Code.

It was also contended that the Senior Subordinate Judge had no jurisdiction to entertain the appeal, as the trial Court's decree was practically a *consent* decree within the meaning of Section 96 of the Code.

Held, that when a party offers to be bound by the statement of a certain person that statement becomes conclusive evidence under the Indian Oaths Act and the decree in such a case is based on such evidence as that person gives and cannot be said to be passed with the consent of the parties, within the meaning of Section 96, Civil Procedure Code.

Petition for revision of the order of Mian Muhammad Afzal Makhdum, Senior Subordinate Judge, Sargodha, dated 23rd December, 1932, reversing that of Bawa Niranjan Singh, Subordinate Judge, 4th Class, Shahpur, dated the 10th March, 1932, and remanding the case to the trial Court for decision of the case on the merits.

KHURSHID ZAMAN, for Petitioner.

R. C. MANCHANDA, for Respondent.

BHIDE J.

BHIDE J.—This was a suit for possession of a house instituted on behalf of *Sardar* Mohammad Jan, a minor, who was under the guardianship of the Court of Wards. The suit was conducted by one *Mirza* Fazal Beg who was granted a power-of-attorney by the Deputy Commissioner. During the pendency of the suit Fazal Beg agreed to be bound by the statement of the defendant on oath on the point at issue between the parties. The oath was accordingly taken and the suit was dismissed. An appeal was preferred to the Senior Subordinate Judge on the ground that the

power-of-attorney given to Fazal Beg did not authorise him to bind the minor by the oath of the defendant. This contention was upheld by the Senior Subordinate Judge and the suit was remanded for retrial.

A petition for revision of this order has been filed on behalf of the defendant, and it is contended that the interpretation placed by the learned Senior Subordinate Judge on the power-of-attorney is incorrect. This contention, however, does not appear to me to be sufficient for the purposes of revision under section 115 of the Code of Civil Procedure. It cannot be denied that the learned Senior Subordinate Judge had jurisdiction to decide whether the power-of-attorney did or did not authorise Fazal Beg to make the offer as regards the oath on the basis of which the suit was decided. He has taken into consideration the contents of the power-of-attorney and the other circumstances and come to the conclusion that Fazal Beg had no authority to make the offer. This finding does not appear to me to be open to challenge in revision.

It was next urged that the learned Senior Subordinate Judge had no jurisdiction to entertain the appeal, as the trial Court's decree was practically a consent decree within the meaning of section 96, Civil Procedure Code. No authority was cited in support of this contention, and it does not appear to me to be well founded. When a party offers to be bound by the statement of a certain person, that statement becomes conclusive evidence under the Indian Oaths Act, and it is on the basis of such evidence as the person gives that the Court decides the case. It cannot therefore be said that the decree in such a case is passed with the consent of the parties. A

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 MUHAMMAD
HASHAM KHAN

v.

 MUHAMMAD
JAN KHAN.

BRIDE J.

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BHIDE J.

decreed cannot, I think, be said to be passed with the consent of the parties within the meaning of section 96, Civil Procedure Code, unless its actual terms are consented to by the parties.

I dismiss the petition for revision with costs.

P. S.

Revision dismissed.

APPELLATE CIVIL.

Before Bhide J.

NUR MUHAMMAD (PLAINTIFF) Appellant

versus

GHULAMAN AND OTHERS (DEFENDANTS)

Respondents.

1933

Nov. 8.

Civil Appeal No 1945 of 1932.

Civil Procedure Code, Act V of 1908, Order IV, rule 1: Plaintiff—proper presentation of—Indian Limitation Act, IX of 1908, Section 4: Period of limitation—where Judge is temporarily absent, and no one authorised to receive plaints.

The Subordinate Judge of Samrala used to sit for a week every month at Ludhiana. During his absence at Ludhiana, the plaintiff presented his plaint at Samrala, which was accepted by the Naib-Sheriff of the Court. The suit was within time when the plaint was thus presented, but it had become time-barred when it was placed before the Subordinate Judge on his return from Ludhiana and was therefore dismissed.

Held, that the plaint was not properly presented to the Naib-Sheriff as he was not authorised to receive plaints under Order IV, rule 1, Civil Procedure Code; but as no arrangements had been made for the reception of plaints during the absence of the Subordinate Judge from Samrala, the Court at Samrala must be taken to have been closed during the period of his absence and under Section 4 of the Indian Limitation Act, that time must be deducted in computing the period of limitation, and the suit was therefore within time.