

1920.

MANGALDAS  
GIRDHARDAS

v.

THE  
ASSISTANT  
COLLECTOR  
OF PRANT  
AHMEDABAD.

The result is that the appeal is dismissed and the award so far as it relates to the amount payable to the appellant is affirmed with costs.

CRUMP, J. :—I agree.

*Appeal dismissed.*

B. B.

---

 APPELLATE CIVIL.
 

---

*Before Sir Norman Macleod, Kt., Chief Justice, and  
Mr. Justice Fawcett.*

1920.

NATHURAM SHIVNARAYAN v. DHULARAM HARIBAM MARWADI<sup>o</sup>.*June 22.*

*Provincial Small Cause Courts Act (IX of 1887), section 25—High Court  
—Revision—Jurisdiction to revise findings of fact.*

Under section 25 of the Provincial Small Cause Courts Act, 1887, the High Court can interfere on questions of fact.

*Poona City Municipality v. Ramji*<sup>(1)</sup> and *Turner v. Jagmohan Singh*<sup>(2)</sup>, referred to.

PER FAWCETT, J. :—Interference in regard to appreciation of evidence should in general only be exercised when there appears to the Court to be a very clear case of misappreciation which has resulted in injustice to a party and makes the decree one that cannot be regarded by a Revisional Court as "according to law."

THIS was an application under section 25 of the Provincial Small Causes Courts Act, 1887, against a decree passed by S. A. Gupte, Subordinate Judge at Jalgaon.

The facts are set forth in the judgment.

*A. G. Sathaye*, for the applicant.

*P. B. Shingne*, for the opponent.

<sup>o</sup>Civil Extraordinary Application No. 11 of 1920.

(1) (1895) 21 Bom. 250.

(2) (1905) 27 All. 531.

MACLEOD, C. J. :—This is a Rule granted under section 25 of the Provincial Small Cause Courts Act which enables the High Court for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, to call for the case, and pass such order with respect thereto as it thinks fit. What happened was this. The plaintiff had dealings with the defendant and one Dhularam Chaturbhuj. According to his story Dhularam Chaturbhuj paid in Rs. 100 which was credited to Dhularam Chaturbhuj in the rough and daily book of the plaintiff, but by mistake of his ledger clerk the Rs. 100 was credited to the ledger account of the defendant, which ledger account was on the same page as the ledger account of Dhularam Chaturbhuj. Thereafter the defendant made payments which were in due course properly credited to his account in the ledger. It was only after sometime when the plaintiff was examining the accounts of Dhularam Chaturbhuj that he discovered that Rs. 100 paid by Dhularam Chaturbhuj had been wrongly credited to the defendant's ledger account. Naturally he made entries correcting the mistake. The defendant sent a notice claiming that he had paid Rs. 100, and when the plaintiff brought a suit for Rs. 110-11-3, the defendant raised this defence with regard to Rs. 100. The learned Judge says in his judgment: "The plaintiff has not written in his accounts who had made this repayment, i.e., by the hand of which person. Whether he wrongly entered it in the name of Dhularam Chaturbhuj or not. Of course the credit entry appears in the book of Dhularam Chaturbhuj. But the plaintiff ought to have taken defendant's signature for the correction made, if the defendant was then willing to admit plaintiff's mistake." Then he deals with the evidence and says that he disbelieved the plaintiff's story as his conduct

1920.

---

NATHURAM  
SHIV-  
NARAYAN  
v.  
DHULARAM  
HARIRAM.

1920.

NATHURAM  
SHIV-  
NARAYAN  
v.  
DHULARAM  
HARIRAM.

was extremely suspicious and the account books could not be credited and passed a decree for Rs. 10-11-3 only.

Now it is quite true that this Court even under section 25 of the Provincial Small Cause Courts Act would be averse to interfering on pure questions of fact. But we cannot concede that the High Court has no power whatever of interfering with decisions on questions of fact. In the case of *Poona City Municipality v. Ranji*<sup>(1)</sup>, the head note includes these words: "the provisions of section 622 of the Civil Procedure Code (Act XIV of 1882) do not afford a safe guide for the exercise of the extraordinary jurisdiction under section 25 of the Provincial Small Cause Courts Act (IX of 1887). The wording of the two sections is wholly different, that of section 25 of the Provincial Small Cause Courts Act being of the widest description and conferring the most ample discretion on the High Court, while it has been held by the Privy Council that section 622 of the Civil Procedure Code (Act XIV of 1882) ought to be construed in a very restricted and limited sense."

In *Turner v. Jugmohan Singh*<sup>(2)</sup> the Court found that "the power of interfering in revision conferred by the Provincial Small Cause Courts Act is wide—wider than the power conferred by section 622 of the Civil Procedure Code, and if substantial grounds are shown for the interference of the Court, the Court is not merely justified in exercising, but acts reasonably in the exercise of, its revisional powers." In that case they were of opinion that a grave injustice would be done if the decree of the Court below were allowed to stand. That case seems to have turned entirely on the appreciation of the evidence in the lower Court.

<sup>(1)</sup> (1895) 21 Bom. 250.

<sup>(2)</sup> (1905) 27 All. 531 at p. 537.

Now in this case it appears to us that the learned Judge's appreciation of the evidence was distorted by the view he took that the plaintiff ought to have got the defendant's signature when the entries were amended. He does not seem to have distinguished between what the plaintiff ought to have done as an ordinary precaution, and something which, if not done, prevented the plaintiff from suing, and having started in that way it appears that he took a far more favourable view of the defendant's case than was justified by the evidence. Really the statement of the defendant that he had paid Rs. 100 was not supported by any outside evidence, and in my opinion it was clearly dictated by the defendant's desire to take advantage of the error in account-keeping made by the plaintiff's ledger-keeper. As opposed to that there was the evidence of the debtor who paid Rs. 100, and the daily account books of the plaintiff. In my opinion, therefore, this is a case in which we should exercise our discretion to prevent an injustice being done to the plaintiff. I think the decree of the lower Court must be set aside and a decree passed in favour of the plaintiff for the amount sued for, viz., Rs. 110-11-3 with costs of this application.

FAWCETT, J. :—I concur. As regards the powers of interference vested in the High Court under section 25 of the Provincial Small Cause Courts Act, I may add that a similar view has been taken by the Judicial Commissioner's Court in Sind in *Rupchand v. Min-homat*<sup>(a)</sup>. At the same time I think that interference in regard to appreciation of evidence should in general only be exercised when there appears to the Court to be a very clear case of misappreciation which has resulted in injustice to a party and makes the decree

1920.

---

NATHURAM  
SHIV-  
NARAYAN  
P.  
DHULARAM  
HABIBAM.

<sup>(a)</sup> (1914) 8 Sindh L. R. 164.

1920.

NATHURAM  
SHIV-  
NARAYAN  
v.  
DHULARAM  
HARIBHAM.

one that cannot be regarded by a Revisional Court as "according to law."

In the present case the weight of the evidence as it stands was immensely in favour of the plaintiff, and is met only by an uncorroborated assertion that defendant had actually paid the money. Had the learned Subordinate Judge not considered that the plaintiff ought to have acted in a certain way, for which there was certainly no obligation on the plaintiff, I do not imagine that he would have come to the conclusion that he did, viz., that the account books were unreliable. In my opinion these circumstances do not show that the evidence given for the plaintiff should not have been accepted. I, therefore, concur in the order proposed.

*Rule made absolute.*

R. R.

---

## APPELLATE CIVIL.

---

*Before Mr. Justice Shah and Mr. Justice Crump.*

1920.

June 22.

NARSAPPA BIN NINGAPPA MALI AND ANOTHER (SONS OF ORIGINAL PLAINTIFF), APPELLANTS v. BHARMAPPA BIN RAYAPPA MALI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS\*.

*Hindu law—Succession—First cousins take per capita and not per stirpes.*

Under Hindu law, first cousins of the propositus take *per capita* and not *per stirpes*.

*Nagesh v. Gururao*<sup>(1)</sup>, referred to.

SECOND appeal from the decision of A. Montgomerie, Assistant Judge of Belgaum, modifying the decree passed by R. G. Shirali, Subordinate Judge at Athni.

Suit to recover possession of property which belonged to one Shidappa. The parties to the suit were

\* Second Appeal No. 705 of 1918.

<sup>(1)</sup> (1892) 17 Bom. 303.