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making it an administration suit for and on behalf of all the creditors, who might have advanced money, when the defendant's predecessor was the Mahant.

In our opinion, the Subordinate Judge has exercised jurisdiction not vested in him by law, and, therefore, we interfere in revision, set aside his order of July 17, 1927, and direct him to proceed with the trial of the suit in the ordinary way. As the respondent has not appeared, costs to be costs in the cause.

Rule made absolute.

J. G. R.

APPELLATE CIVIL

Before Mr. Justice Fawcett and Mr. Justice Patkar.

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GYANAJI POMAJI MARWADI (ORIGINAL RESPONDENT), APPELLANT *v.* NINGAPPA MARBASAPPA ARLESHWAR (ORIGINAL APPELLANT), OPPONENT.*

Civil Procedure Code (Act V of 1908), Order XLVII, rule 1—Review—Subsequent legislation, no sufficient reason for review.

In the case of a decision that was right when it was made, an alteration in the law, the result of subsequent legislation, cannot be deemed to be new and important matter within the meaning of Order XLVII, rule 1, Civil Procedure Code, 1908, nor can a review be entertained in such a case on the ground that the alteration in the law constitutes "other sufficient reason" within the meaning of that rule.

Kotaghiri Venkata Subbamma Rao v. *Vellanki Venkatarama Rao*[1] and *Chhajju Ram* v. *Neki*,[2] relied on.

Waghela Raisangji Shivsangji v. *Shaik Masludin*,[3] relied on.

APPLICATION for review of judgment in Second Appeal No. 515 of 1925 reported in 51 Bom. 231.

Suit for specific performance.

The plaintiff alleged that the defendant agreed to sell two of his lands to plaintiff for Rs. 4,000; that Rs. 2,000 had been paid as advance for which a receipt was passed.

The defendant admitted having executed the agreement, but contended that it was passed to

*Civil Application No. 339 of 1927.

(1) (1900) 24 Mad. 1. (2) (1922) 3 Lah. 127 : L. R. 49 I. A. 144.

(3) (1888) 13 Bom. 330.

accommodate his brother-in-law, Chanbasanagouda, who was in need of Rs. 2,000; that Chanbasanagouda asked one Basaji to lend him the sum; that Basaji insisted on a promissory note being passed for double the amount and as a security wanted that defendant should enter into an agreement to sell his lands for Rs. 4,000 to plaintiff who was Basaji's relative and partner in his business.

The Subordinate Judge found the defence story established on the evidence and dismissed the plaintiff's suit.

On appeal, the District Judge reversed this decision and passed a decree in favour of the plaintiff.

The defendant preferred a second appeal to the High Court. The said appeal was heard by Mr. Justice Fawcett and Mr. Justice Patkar. It was contended on appellant's behalf that the agreement in suit, not being registered, was inadmissible in evidence. Their Lordships, relying mainly on the ruling of the Privy Council in *Dayal Singh* v. *Indar Singh*[1] upheld the objection and dismissed the suit, though in their opinion if they had held otherwise on the admissibility of the agreement, it would have been necessary to remand the suit for finding on the merits of the story set up by the defendant.

The judgment of the Court was passed on September 22, 1926. Thereafter, in February 1927, an alteration in the law on this point was made by Act II of 1927, section 2 of which added an *Explanation* to section 17 (2) of the Indian Registration Act. On the strength of this new legislation and also the suggestions made by the Court, a review application was presented on April 6, 1927. The application was heard.

[1] (1926) L. R. 53 I. A. 214 : 28 Bom. L. R. 1372.

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Coyajee with *G. P. Murdeshwar*, for the appellant.

G. N. Thakor with *S. B. Jathar*, for the opponent.

FAWCETT, J. :—This application arises out of the judgment of this Court passed on September 2, 1926. In that judgment it was held that the document sued upon required registration in view of the Privy Council decision in *Dayal Singh* v. *Indar Singh*.[1] That decision was contrary to the general view of the law that had been previously held in India, and at the time of the hearing of the appeal, there was a possibility that the Legislature might intervene and pass an Act validating documents that had not been registered on account of the previous view of the law. That possibility was referred to in my judgment, but I remarked that it could not affect the decision of the present case, and accordingly held that the objection was a good one, sufficient to require the plaintiff's suit to be dismissed as it had been in the trial Court. On the other hand, I said (51 Bom. 236) :—" In view of the possibility I have just mentioned, I think it is right that we should give our decision on the various points that have been argued before us, so that (supposing there is any legislation of the kind I have referred to, permitting the plaintiff to have his case considered on the merits, apart from this objection of registration) it should not be necessary to have a further re-hearing on these points." They were, therefore, gone into and an indication was given as to what our further proceedings or decision would be, supposing the objection about registration had not succeeded. The decree, however, that was actually passed, in view of the objection about registration, was one setting aside the decree of the lower appellate Court and restoring the decree of the trial Court dismissing the plaintiff's

[1] (1926) L. R. 53 I. A. 214 : 28 Bom. L. R. 1372.

suit. Each party was ordered to bear his own costs of the appeal to the District Judge and the appeal to this Court; and under the confirmation of the order of the trial Court, the plaintiff had to bear the costs of the defendant in the suit.

Subsequently, Act No. II of 1927 was passed, and section 2 of this Act added the following explanation in sub-section (2) of section 17 of the Indian Registration Act, 1908, namely :—

" *Explanation.*—A document purporting or operating to effect a contract for the sale of immoveable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money."

In view of this legislation, and the remarks that have been made in the judgment that I have mentioned, this Court in March 1927 directed that the case should be put on our board for further consideration. On March 22, 1927, the record of the case was called for; and on April 5, 1927, we directed that on an application for review being presented by the respondent in the appeal, a rule should at once issue to the appellant and the case then be set down for argument. In view of the suggestion there made that an application for review should be made, one was submitted by the respondent in the appeal to this Court, who is the plaintiff in the suit, in which we were asked to review the judgment of September 2, 1926, and re-hear the appeal on the merits on the ground that Act No. II of 1927 made it clear that the agreement in suit never required registration. The petitioner further prayed that the delay in making the application should be excused in view of the fact that the new legislation was passed only recently and also in view of the circumstances mentioned in the petition.

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The questions that arise have been very fully and ably discussed before us. Mr. Coyajee for the petitioner mainly rests his case upon the contention that by its judgment of September 2, 1926, this Court did not finally pass a judgment in favour of the appellant, but made a reservation as to subsequent legislation, so that the legislation that was eventually passed is sufficient authority for this Court's altering its decree, so far as it is based on the view that the document required registration, whereas the Act says that it should never have been deemed to require registration. On the other hand, Mr. Thakor has strenuously opposed this view, and he has referred to the observations made in my judgment in *Rajaram* v. *Central Bank of India*,[1] as to subsequent legislation not affecting decided cases, so as to permit of their being re-opened. Mr. Coyajee does not contest the proposition there laid down, but says that this is a case where, in fact, the case was not concluded by the judgment of this Court, and under the reservation already mentioned, this Court can allow the case to be re-opened. I do not, however, think, after considering the arguments, that we would be justified in accepting that view. The judgment was a definite one, given upon the view of the law that had been taken by the Privy Council; and in making the remarks about the possibility of legislation, which occurred in my judgment, I had in mind not only an enactment which would restore the previous view of the law, but would also contain some provision permitting a litigant, against whom a decision had been passed in consequence of the Privy Council decision, to make an application to have a case re-opened, such as was allowed in sub-section (2) of section 31 of the Indian Limitation Act, 1908, and in section 5 of the Indian

[1] (1926) 28 Bom. L. R. 879 at pp. 892-894 : 51 Bom. 711.

Limitation (Amendment) Act, 1912, (Bombay Act XIII of 1912), in regard to questions of limitation under the Dekkhan Agriculturists' Relief Act, 1879. If some such provision had been made, and the necessary application had been made in due time, then the case would have been one where we could have gone into the merits, as we did in order to anticipate such a position; but I cannot hold that we in our judgment made our decree in any way contingent upon subsequent legislation, so that merely because of the Act of 1927 we should alter the decree. I agree with Mr. Thakor that, if we did that, we would be assuming jurisdiction of a kind not contemplated by any of the provisions of the Civil Procedure Code. I do not think that it is a case which can be properly held to fall even under the provisions of section 151 of the Code.

The second question is whether an application for review lies on the ground of this subsequent legislation. The case is one where it could possibly be said that the subsequent legislation constituted "new and important matter" of the kind mentioned in Order XLVII, rule 1, of the Civil Procedure Code, and that view would have some support from the decision in *Waghela Raisangji Shivsangji* v. *Shaik Masludin*.[1] That, however, was a peculiar case in which the decree which was reviewed depended on another decree between the same parties and raising the same questions, which was subsequently reversed by the Privy Council; and even apart from that consideration, I do not think that we could possibly hold that the case is one of new and important matter being discovered, because in *Kotaghiri Venkata Subbamma Rao* v. *Vellanki Venkatarama Rao*,[2] their Lordships most unequivocally laid it down that the rule does not authorise the review of a decree which was right when

[1] (1888) 13 Bom. 330. [2] (1900) 24 Mad. 1 at p 10.

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it was made, on the ground of the happening of some subsequent event. The only real question is whether the case is one where there can be held to be " any other sufficient reason " within the meaning of that rule. The Privy Council has held that such reasons should, at any rate, be of a kind analogous to the grounds for review that are specified in the rule. See *Chhajju Ram* v. *Neki*.[1] In that case it was held that a Court hearing an application for a review of decree made on appeal has no power to order a review upon the ground that the decision was wrong on the merits. In view of that decision, it seems to me that we cannot properly hold that there is justification for a review in this particular case, and we should adhere to the general principle that decided cases are not to be re-opened.

There is moreover the objection that under Article 173 of the Indian Limitation Act, the review application was made beyond the prescribed period of limitation, and it would be necessary for us, if we accepted the application, to excuse the delay under section 5 of the Indian Limitation Act. The application could have been made, at any rate, early in March 1927 when it was known that Act II of 1927 was passed, and there was a delay of about two months before it was actually made. In fact, the Court first moved in the matter and not the applicant. In these circumstances, I think that it would be difficult for us to say that there are sufficient grounds for excusing the delay, especially in view of the general principle that when once a decree has been passed, the decree-holder has a valuable right, which should not be interfered with except where there are distinct and proper grounds for doing so.

I would, therefore, dismiss the application with costs.

PATKAR, J. :—I agree.

Rule discharged.

J. G. R.

[1] (1922) 3 Lah. 127 : L. R. 49 I. A. 144.