the Moonsiff was wrong in admitting the review, on the ground of discovery of new evidence, without proof sufficient to satisfy him *primâ facie*, of the truth or otherwise of the allegation. The Subordinate Judge who heard the appeal was of opinion that because the Moonsiff considered the documents tendered as new evidence to be material to the defendant's case, he (the Moonsiff) was justified in admitting a review. This Court also upheld the lower Court's decision on the merits.

The plaintiff next preferred a special appeal to the High Court.

Baboo *Taraknath Sein*, for the appellant, contended that the proceeding of the Moonsiff in admitting the review on the bare allegation in the petition, unsupported by any evidence whatever, was contrary to the provisions of section 376 of Act VIII of 1859. He cited the cases of *Shumsheir Ali Khan* v. *Ramchunder Goopto* (1), *Naffar Chand Pal Chowdhry* v. *A. D. Sandees* (2),

(1) 2 W. R., 174.

(2) *Before Mr. Justice Phear and Mr. Justice Hobhouse.*

The 3rd December 1868.

NAFFAR CHAND PAL CHOWDHRY AND ANOTHER (DEFENDANTS) v. A. D. SANDES AND ANOTHER (PLAINTIFFS).*

Mr. *Vertannes* and Baboo *Srinath Das* for the appellants.

Baboo *Bhawani Charan Dutt* for the respondents.

The judgment of the Court was delivered by

PHEAR, J.—We think that the special appellant must succeed in this case on the ground, which perhaps is somewhat narrow, that the review was granted by the lower Court without there being any evidence before the Court to justify its coming to the conclusion that a review of its judgment was properly required within the provisions of section 378 of the Civil Procedure Code. We think that the Judge ought not to have admitted a review for the purpose of receiving fresh evidence in the suit, except upon being satisfied by legal evidence that the fresh evidence proposed to be adduced was not known to the applicant, or could not be obtained by him, at the time of the original trial. Had there been any evidence to this effect before the Judge, we could not here, sitting in special appeal, have interfered with his discretion as regards the conclusions which he drew from it. But it appears to us that there was in fact no evidence before him. He directed a review simply upon the statement made to him in the petition of the plaintiff, and that petition, as we understand, was not verified: it was therefore really nothing more than an unsanctioned statement. We think it right to add that even had there been some evidence before the Judge, upon which he could have legally come to the conclusion favorable to the petitioner in the matter of his petition for a review, still, to use the words of the Chief Justice in *Dwarkanath Chowdhry* v. *Kishenlall Chowdhry* (*a*) "he ought not to "have granted the application without "strict proof that the new matter was "discovered since the decree was passed." We direct that the order granting the review be set aside, and we reverse the decision which has been come to by the lower Appellate Court upon the review. The special appellant must have his costs in this Court and in the lower Court upon review.

* Special Appeal, No. 1890 of 1868, from a decree of the officiating Judge of Nuddea, dated the 26th June 1868, reversing a decree of the Subordinate Judge of that district dated the 28th April 1868.

(*a*) Marshall, 554.

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UMRAO THAKUR v. GAKUL MANDAL.

Ramdhan Chuckerbutty v. *Jainarayan Panja* (1), and *Sitanath Ghose* v. *Shama Sundari Dasi* (2).

No one appeared for the respondents.

(2) *Before Mr. Justice Bayley and Mr. Justice Sir C. P. Hobhouse, Bart.*

The 20th December 1869.

RAMDHAN CHUCKERBUTTY (PLAINTIFF) *v.* JAINARAYAN PANJA AND OTHERS (DEFENDANTS).*

Baboos *Chandra Madhab Ghose* and *Khettra Mohan Mookerjee* for the petitioner.

Baboos *Srinath Das* and *Kali Krishna Sen* for the opposite party.

HOBHOUSE, J.—The petitioner applies for a review in this instance on the ground of the discovery of new evidence. He supports the application by an affidavit, the purport of which goes no further than this,—viz., that there is a decision of the 18th December 1838, and a kabala of the 11th Aswin 1229 (26th September 1822) the existence of which he did not discover until after the disposal of the special appeal by this Court.

I consider that this affidavit is insufficient on two grounds. It does not sufficiently disclose to my mind the truth of the fact that the applicant was not aware of the existence of the documents until after the date of our judgment in special appeal, nor does it at all disclose that those documents are or can possibly be evidence in the cause. When, after a prolonged litigation and as the applicant states in this case, after diligent search for evidence is support of his cause, the applicant does not find certain documents until after a certain specified date,—viz., until after the final decision of his case, what we should expect and require in an affidavit would be, that the person making it should satisfy us by declaring in detail how it was that he acquired the knowledge which he had not before.

Now in this case we have no such detailed statement, but a simple bare affirmation with which it is impossible that we should be satisfied. The law, moreover, seems to me to require that we should be satisfied that the documents here before us are *primâ facie* "evidence" in the cause, and here what we should have expected in a true affidavit would have been a statement to the effect that the person making it had ascertained that those particular documents were evidence in the cause, for instance, that in this case the lands were indentified with the documents, but here there is no such statement. I think therefore, that the affidavit does, not makeout a ground for review, and I would herefore reject this application with costs.

BAYLEY, J.—I concur. Section 376 Act VIII of 1859, seems to me to require that the evidence alleged to have been newly discovered was not within the knowledge of the applicant, or could not be adduced by him at the time when the decree was passed, or some other good and sufficient reason. I do not think that there has been a compliance with any of these conditions in the present application. There is a simple statement that a copy of the decision of 1838, and a copy of the kabala of the 11th Aswin 1229 (26th September 1822) upon which that decision was passed wherein Srimant Panja was a witness, are the documents on which the review is asked for. It does not appear that the evidence of Srimant Panja separately is tendered to us. There is no affidavit that there was no means of knowing that the documents were available before. There is nothing to shew why the documents relied upon on the previous occasion were easily available, and those which are now relied upon were not so. They are of the same character, coming also from the same official records. In addition to that there is neither in the affidavit nor in the pettition of review a clear and distinct statement that on a view of those records the Court can be satisfied of the identity of the lands. The petition is rather more of the character of a request that the documents previously put in no being sfficient more of the same character may be taken into consideration

I agree therefore in rejecting this application with costs.

(2) *Post*, p. 37.

* Application for Review, No. 310 of 1869, from the judgment of Mr. Justice Bayley and Mr. Justice Sir C. P. Hebhouse, Bart., dated the 4th August 1869, in Special Appeal No. 475 of 1869.