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enquiry or proof that the new evidence was not within the knowledge of the applicant for review at the hearing of the case, or could not be adduced by him when the decree was passed. It was admitted that no evidence of the statement in the petition for review was taken.

The question, therefore, arose whether the order of the Subordinate Judge granting the review was not final, and could not be questioned in this special appeal.

The decisions in the High Court were conflicting. On one side were *Naffar Chand Pal Chowdhry* v. *Sandes* (1) *Umrao Thakur* v. *Gakul Mandal* (2) and *Nudarchund Bhooya* v. *Reedoy Mundul* (3); and on the other, *Shaikh Gholam Hossein* v. *Okhoy Coomar Ghose* (4) and *Cochrane* v. *Heralal Seal* (5).

(1) 8 B. L. R., App., 35, note.
(2) *Id.*, 34.
(3) *Before* Mr. *Justice Kemp and* Mr. *Justice Glover*.

The 14th March 1872.

NUDARCHUND BHOOYA (ONE OF THE DEFENDANTS) *v.* REEDOY MUNDUL (PLAINTIFF).*

Review—New Evidence.

Baboo *Grish Chunder Ghose* for the appellant.

Baboo *Mahendro Loll Mitter* for the respondent.

THE judgment of the Court was delivered by

GLOVER, J.—The substantial question for decision in this special appeal is whether the Deputy Commissioner has acted according to law in admitting a review of judgment.

The circumstances are as follows:—The plaintiff sued for possession of land leased to him by Haradhone Dass in the year 1276 B.S. (1869), and of which the defendants Sooroof Bhooya and others kept him out of possession. These defendants claimed to hold of the same Haradhone Dass on a lease granted in 1261 B.S. (1854), and denied the power of the zemindar to oust them, they having, by a tenancy of more than twelve years, obtained a right of occupancy.

The zemindar, who was made what is called a *pro formâ* defendant, supported the plaintiff's case. The lease to the defendant was for four years only, on the expiry of which the land was given to the plaintiff. The Munsif decreed the suit in favor of the plaintiff. But the Deputy Commissioner on appeal reversed that decision, holding that the potta of the defendants was genuine, and that their possession for more than twelve years was clearly proved.

(4) 3 W. R., Act X Rul., 169.
(5) 7 W.R., 79.

* Special Appeal No. 920 of 1871, from a decree of the Deputy Commissioner of Manbhoom, dated the 9th May 1871, affirming a decree of the Munsif of that district, dated the 25th November 1869.

The following cases were referred to as bearing on the point:—*Gunganarain Roy* v. *Gonomoonee* (1) and *Shamachurn Chuckerbutty* v. *Bindabun Chunder Roy* (2)

An application was made for a review of this judgment, and the Deputy Commissioner (not the officer who had passed the decision on appeal) admitted it on the ground that the new evidence filed by the plaintiff proved that the defendants could not have been, as they alleged, in possession of the land in 1260—62 (1853—55), and that their story of long uninterrupted possession from the year 1261 (1854) was false. The Deputy Commissioner therefore reversed the order of his predecessor, and confirmed the original decision of the Munsif.

Now, if the Deputy Commissioner admitted the review on grounds that are good in law, this Court would have no jurisdiction to interfere, or to say that the review ought not to have been granted.

The petitioner for review, Reedoy Mundul, based his application on the discovery of new evidence, which he said was on the record of an Act IV of 1840 case, and he produced an authenticated list of the documents then filed, to prove that these documents were on the Act IV record. These documents were produced at the hearing, and, as before mentioned, decided the case in favor of the applicant for review.

The rule of law we take to be that a Judge ought not to admit a review for the purpose of receiving fresh evidence in a suit until he is satisfied by legal evidence that the new matter was not known to the applicant, or could not be adduced by him, when the decree was passed. The point has been ruled in this sense in *Dwarka Nath Chawdhry* v. *Kishen Lall Chowdhry* (*a*), *Shumsheir Ali Khan* v. *Ramchunder Goopto* (*b*), *Naffar Chand Pal Chowdhry* v. *A. D. Sandes* (*c*), *Khelut Chunder Ghose* v. *Prankristo Day* (*d*)—which expressly followed the former ruling—and *Umrao Thakur* v. *Gakul Mandal* (*e*). We may therefore lay it down as settled law that a judge admitting a review on the ground of the discovery of new evidence, must first satisfy himself on legal evidence that the applicant has brought himself within the section, in other words must insist on the fact of the applicant's ignorance or inability being strictly proved.

Now in this case this proof is altogether wanting; indeed, the Deputy Commissioner does not seem to have asked for it. The plaintiff filed a simple unverified petition, and on it the Judge acted. No attempt was made to prove that the plaintiff was previously unaware of the existence of certain documents on the record of the Act IV suit, or that being aware he was unable to procure them. He did not even give the pledge of his own deposition. It may be doubted indeed whether a simple affidavit would have been sufficient; but the plaintiff gave no evidence at all on the points

(1) 8 W. R., 184.

(2) Case No. 1395 of 1866; 30th January 1868.

(*a*) Marsh, 553.
(*b*) 2 W. R., 174.
(*c*) 8 B. L. R., App., 35, note.
(*d*) *Post*, p., 428.
(*e*) 8 B. L. R., App., 34.

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The cases in other Courts—*Gurumùrtti Náyudu* v. *Pappa Náyudu* (1), *Subbramhniya Pillay* v. *M. Perumal Chetty* (2), and *Dhunka Devla* v. *Hira Ramla* (3).

In consequence of this conflict of decisions the question was referred to a Full Bench : " Whether the order granting the review is final and cannot be questioned in this appeal, on the ground that there was no enquiry or proof that the new evidence required, and that being so we think that no application on his part for a review of judgment could have been legally obtained.

It is not necessary for us to comment on the facts of the petitioner's application, but it is open to the remark that, if the plaintiff knew of the Act IV proceeding at all, there was no apparent reason why he should have been ignorant of these particular documents, and also (a point which seems to have escaped the Deputy Commissioner) that Reedoy Mundul was himself a defendant in the Act IV suit, and being in that position would have found it hard to explain his ignorance of the new matter which he wished to bring forward, or his inability to adduce it when the suit was originally tried.

The pleader for the special respondent endeavored to show that the review was not admitted by the Deputy Commissioner on the ground of new evidence alone, but on other grounds also which would bring it within the meaning of the words "good and sufficient reason" of s. 376, Code of Civil Procedure, in which case there would be no appeal against the order admitting the review. It seems clear to us however, that the Deputy Commissioner had no other reason for admitting the application than this so-called new evidence. He says :—" Plaintiff has applied for a review of judgment, urging that he had procured fresh documents that bore on the case, and that these would prove that the potta filed by the defendant was a forgery, and that the kabuliat given by him to the *pro formâ* defendant in 1271 (1864) for four years was a true document." In other words, that the potta and kabuliat in question, on which the original judgment was in great part based, would be shown by the new evidence to be then filed to support the plaintiff's case instead of damaging it. It is not contended that the Deputy Commissioner had begun to take a different view of the importance of this potta and kabuliat, irrespective of the new evidence sought to be filed, or that he had the least intention of reviewing the judgment of his predecessor on any other ground than that of new evidence.

We are therefore of opinion that this appeal should be allowed, and that the judgment of the Deputy Commissioner passed after the admission of the review should be set aside. As we take this view of the case, there is no necessity for our going into the question as to how far the new evidence was binding on the defendants. The special respondent will pay all the costs.

(1) 1 Mad. H. C. Rep., 164.
(2) 4 Mad. H. C. Rep., 251.
(3) 4 Bom. H. C. Rep., A. C., 57.

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was not within the knowledge of the applicant at the hearing, or could not be adduced by him before the decree was passed."

Baboos *Mohinimohun Roy* and *Greeshchunder Ghose* for the appellants.

Baboos *Chunder Madhub Ghose* and *Rajender Bose* for the respondents.

Baboo *Mohinimohun Roy*.—When the ground on which a review is sought is the discovery of new evidence, it is a condition precedent that the matter is new, and was not within the knowledge of the applicant, or could not be adduced by him at the original trial. S. 372 of Act VIII of 1859 gives an appeal from the last judgment for any error in law. There are authorities that the order admitting a review can be questioned when the whole case comes up on appeal after judgment—*Shumsheir Ali Khan* v. *Ram Chunder Goopto* (1), *Nolita Mohon Roy Chowdhry* v. *Denonath Mookerjee* (2), *Naffar Chand Pal Chow-*

(1) 2 W. R., 174.

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

The 10th June 1863.

NOLITA MOHON ROY CHOWDHRY (ONE OF THE DEFENDANTS) *v.* DENONATH MOOKERJEE (PLAINTIFF).*

Review—New Evidence—Act VIII of 1859, *s.* 377.

Baboo *Hem Chunder Bannerjee* for the appellant.

Baboos *Chunder Madhab Ghose* and *Sreenath Bannerjee* for the respondent.

THE judgment of the Court was delivered by

PHEAR, J.—I think that this appeal is conclusively governed by a series of decisions of this Court, and particularly by those in the cases of *Gunganarain Roy* v. *Gonomoonee* (*a*) and *Shamachurn Chuckerbutty* v. *Bindabun Chunder Roy* (*b*). Indeed, it is only necessary for me to quote a passage from the judgment of the Chief Justice as given in the case of *Gunganarain Roy* v. *Gonomoonee* (*a*) to adopt it as expressive of the opinion of this Bench, in order to completely decide, in favor of the special appellant, the question which is raised by his first ground of appeal. The Chief Justice says:—"It appears to me that upon the principle of that case (*i.e.*,

* Special Appeal, No. 2732 of 1867, against the decree of the Second Principal Sudder Ameen of Zilla 24-Pergunnas, dated the 27th June 1867, modifying a decree of the Sudder Ameen of that district, dated the 14th October 1863.

(*a*) 8 W. R., 184. (*b*) Case No. 1385 of 1866; 30th January 1868.

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dhry v. *A. D. Sandes* (1), *Khelut Chunder Ghose* v. *Prankisto Day* (2), *Umrao Thakur* v. *Cakul Mandal* (3)' and *Nudarchund*

the decision of the Privy Council), the order of the Principal Sudder Ameen admitting the review, without stating that he was satisfied that there was good reason for the delay in presenting the petition of review, cannot stand." These words are so opposite to the present case that one might suppose that they were pronounced in direct reference to the facts before us.

The Principal Sudder Ameen has here admitted the review after the expiration of ninety days prescribed by s. 377 of Act VIII of 1859, and he has not shown or stated that he was satisfied there were good reasons for the delay. It follows, therefore, on the authority of the above case alone, that the judgment of the Principal Sudder Ameen on review cannot be upheld, and must be reversed.

It is not necessary that I should go further into the matter of the special appellant's objections, but I think it right to say that if, as appears to have been the case, there was no new matter brought before the Principal Sudder Ameen at the hearing of the review, which the petitioner in review could not with reasonable diligence have obtained, brought forward, or urged, at he time of the original hearing, or some other like cause affecting the administration of substantial justice between the parties, the review ought not to have been entertained, even had the application for review been preferred within the limited time of ninety days. When one a Civil Court has passed a final decision between the parties, it loses jurisdiction over the suit except for the purposes of executing the decree, and it cannot hold a new trial of the same unless, for some reason within the Procedure Act, the first trial appears to have been unfair between the parties. We reverse the decision of the Principal Sudder Ameen made on review, and confirm the decree which he made on the original hearing on appeal on the 20th of April 1864. The special appellant must have his costs in this Court, and also his costs in the lower Court on review.

(1) 8 B. L' R., App., 35, note.
(2) *Before Mr. Justice L. S. Jackson and Mr. Justice Glover.*

The 1*st December* 1869.

KHELUT CHUNDER GHOSE (PLAINTIFF) *v.* PRANKISTO DAY AND OTHERS (DEFENDANTS).*

Review—New Evidence.

Baboo *Motilall Mookerjee* for the appellant.

Mr. *H. E. Mendies* and Baboo *Prosonno Coomar Roy* for the respondents.

THE judgment of the Court was delivered by

L.S. JACKSON, J.—The Subordinate Judge, in this case, first dismissed the suit of the plaintiff on the ground that the plaintiff had not substantiated his right to maintain the suit, as the purchaser of the rights of the parties entitled to wasilat. Thereupon the

(3) 8 B. L. R., App , 34.

* Special Appeal, No. 1994 of 1869, against the decree of the Judge of Zilla Beerbhoom, dated the 10th May 1869, reversing the decree of the Subordinate Judge of that district, dated the 25th January 1869.