Special Appeal No. 417 *of* 1866.

1867.
March 21.

DHUNKÁ DEVLÁ.....*Appellant.*

HIRA RÁMLÁ.....*Respondent.*

Review—Order granting final—Discretion—Special Appeal—Act VIII. of 1859, *Secs.* 2 *and* 378.

In a suit to recover land on a document described as a lease, Munsif M. decided that the document created a mortgage; and that the suit should be for redemption. In a subsequent suit to redeem, Munsif D. decided that the same document operated as a sale, and threw out the claim, which decision was affirmed by the District Judge in appeal. Plaintiff then applied to Munsif L. to review the decree of the Munsif M. A review was granted, the claim re-heard, and plaintiff had judgment to recover the land as heir of his uncle, on the ground that his uncle's widow, who passed the document sued upon, had no right to alienate the land. This decree was affirmed by a new District Judge.

Held, that though L.'s act in granting the review was of a very questionable character, his order was thereon final, under Sec. 378 of Act VIII. of 1859, and that the propriety of the order could not be inquired into on a special appeal from the decision passed after the review had been admitted.

THIS was a special appeal from the decision of C. G. Kemball, Acting Judge of the Surat District, in Appeal Suit No. 5 of 1866, confirming the decree of the Munsif of Surat.

The case was heard before TUCKER and GIBBS, JJ.

Dhirajlal Mathuradas for the appellant.

No one appeared for the respondent.

The facts of the case sufficiently appear from the following judgment, delivered this day by—

TUCKER, J.:—The plaintiff in this suit, Hirá by name, originally brought his action in the Court of a Munsif at Surat, as nephew and heir of the husband of a woman named Makli, who had been the last holder of certain assessed land under Government, to eject the defendant, Dhunká, whom he asserted to have been the sub-tenant of Makli, and who denied his title as landlord, and refused to vacate.

The defence set up was, that Makli, before her death, had conveyed the land to the defendant. The plaintiff put in a document which he described as a lease of the land by Makli

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to the defendant. The Mansif, Azam Hazrat Miyá, held that that document created a mortgage, and gave defendant a lien on the land; and that plaintiff could not recover the land except by a suit for redemption. He, therefore, dismissed the claim in the form in which it had been brought.

Hirá then instituted a suit to redeem in another Munsif's Court at Surat, when Ázam Daulatráv decided that the deed in question created a sale, and not a mortgage, and threw out the claim to redeem. This decree was affirmed, in appeal, by Mr. Cameron, District Judge of Surat.

The plaintiff then applied to Ázam Lallubhái, the successor to Ázam Hazrat Miyá, to review the previous decree of his predecessor, and Ázam Lallubhai admitted a review without recording any reasons for his act, and then re-heard the case, and decreed that the land should be restored to the plaintiff, on the ground that the alienation by the widow Makli was invalid; and that plaintiff, as the heir of Makli's husband, was entitled to succeed to the land after her decease. This decree was affirmed in appeal by Mr. Kemball, District Judge; and a special appeal has now been made against his decision.

The objections taken are:—(1) That there were no proper grounds for the admission of a review of his predecessor's decision by Ázam Lallubhai; and that, consequently, that admission was illegal, and all subsequent proceedings nullities. (2) That the re-opening of this suit, after there had been a decision of the District Court that Makil's deed created a sale, was altogether irregular, and opposed to the intention of Sec. 2 of Act XVIII. of 1859, which prescribed that no second suit should be brought on a cause of action between the same parties previously heard and determined.

We are of opinion that the act of the Munsif Ázam Lallubhái, in admitting a review of his predecessor's decision, on the ground of the result of the suit for redemption, which had been instituted in conformity with the direction of that predecessor, was of a very questionable character; but we are also of opinion that it is not competent to this court to

inquire into the property or impropriety of the order made by the Munsif on that occasion. The Civil Procedure Code, Sec. 378, gives authority to a Civil Court to grant a review when it is of opinion that it is requisite for the ends of justice; and it has prescribed that the order granting the review shall be final. We are debarred, therefore, as has already been held in Special Appeal No. 25 of 1866, from looking behind that order.

The objection taken with respect to Sec. 2 of Act VIII. of 1859 does not apply. When this suit was instituted, there had been no previous suit heard and determined on the same cause of action between the same parties; and the decision of the second suit to redeem, which was commenced after the first decree in this suit had been made, could be no hindrance to the re-opening of this action, if good grounds had been shown for a new trial. The Legislature has left the determination of that point with the court which made the decree of which a revision was sought; and we cannot interfere with the exercise of the discretion which has been expressly given and limited to a court so situated. Cases have come before us recently which have led us to doubt whether it was a wise step on the part of the Legislature to give complete finality to an order admitting a review: but we must administer the law as it stands, whatever our opinion may be of its policy.

No other grounds for interfering with the District Judge's decision have been urged, so we must affirm the lower court's decree; and the special appellant must bear all the costs of this special appeal.

Decree affirmed.