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sit is, of course, that the parties shall be heard; the object of decision 108 is to ensure within reasonable limits as to public convenience that every defendant shall have a hearing. An order under section 108 is not appealable under section 588. Unless an order under that section is appealable by reason of its being an order "affecting the decision of the case," it is not appealable under section 591. Now in one sense it affects the decision of the case, because it ensures a decision upon the merits, and sets aside a decision which has not been obtained upon the merits, but we cannot think that that can be an "affecting" within the meaning of the words "affecting the decision of the case." We think that the words "affecting the decision of the case" must be taken to mean "affecting the decision of the case with reference to the merits of it," and that an order under section 108, which merely ensures a hearing upon the merits, cannot be considered to be an order "affecting the decision of the case" under section 591.

We, therefore, set aside the decision of the Subordinate Judge, and we remand the case to him, in order that he may proceed with the hearing of the appeal according to law, upon the merits.

F. K. D.

Case remanded.

Before Mr. Justice Pigot and Mr. Justice Stevens.

BARODA CEURN GHOSE (DEFENDANT) v. GOBIND PROSHAD
 TEWARY AND OTHERS (PLAINTIFFS.) *

*Appeal—Order granting review of judgment—Civil Procedure Code
 (Act XIV of 1882), section 629.*

In general final appeal an order for review can only be challenged upon the grounds stated in section 629 of the Civil Procedure Code. *Har Nandan Sahai v. Behari Sing* (1) followed.

THIS was a suit brought in the Court of the Munsif of Ghatal

* Appeal from Appellate Decree No. 1084 of 1894 against the decree of Babu Karoonamoy Banerjee, Subordinate Judge of Midnapore, dated the 30th of March 1894, affirming the decree of Babu Benode Behary Mitter, Munsif of Ghatal, dated the 14th of December 1892.

(1) *Ante* p. 3.

in the district of Midnapur for rent of a *putni* taluk from Kartik 1298 to Jeyt 1299, at the rate of Rs. 834 4 ans. 18 gundas sicca or Rs. 1,889 15 ans. 10 gundas Company's coin, a year, with cesses, *dak* charges and interest. The *putni*, which formerly stood in the names of Kissen Kumar Moshanta and his co-sharers, was put up to sale under Regulation VIII of 1819 and purchased by the defendant on the 14th of May 1891.

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The defendant contended that the *putni* was in the possession of his relative Anada Churn Das, on whose death it was in the occupation of his minor sons, Kuloda Chunder Das and Mohini Mohun Das; that the plaintiffs having put up the property to sale without the knowledge of the *talukdars*, he (the defendant) purchased it at auction for the benefit of the minors and the protection of their interests, and sold it back to them by a registered deed of sale; that he had never been in possession and was not liable for the rent; that the *jama* payable for the *putni* was Rs. 834 4 ans. 18 gundas and not Rs. 889 15 ans. 10 gundas as stated in the plaint; that the plaintiffs were not entitled to any *dak* charges; and that the rent and cesses for 1298 had been paid in full on behalf of the minors.

The following issues were raised:—

- 1.—Whether the defendant is liable for rent?
- 2.—What is the *jama* annually payable for the *putni*?
- 3.—Whether plaintiffs are entitled to the *dak* charges claimed?
- 4.—Is the plea of payment true?

The Munsif found that the defendant was liable for the rent, that the *jama* was Rs. 834 4 ans. 18 gundas, and that the claim in regard to *dak* charges was not proved. As regards the fourth issue a receipt for Rs. 485 4 ans. 10 gundas, purporting to have been granted by the plaintiff's *am-mukhtear* on the back of an *istahar*, was put in evidence by the defendant. This receipt the Munsif held to be a forgery. The Munsif accordingly gave a decree in part to the plaintiff. Against this decree both parties appealed to the Subordinate Judge of Midnapur who dismissed the plaintiff's appeal and decreed the defendant's appeal, finding that the receipt was genuine, and that it was for a *jama* at the

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higher rate claimed by the plaintiff and giving the defendant credit for the amount stated in the receipt. The plaintiffs applied for a review of judgment which the Subordinate Judge granted making the following order : "After hearing both sides this Court is of opinion that there is an error in the judgment of this Court which may have affected the petition for review. The error relates to the amount entered in the disputed receipt which this Court took to be a moiety of the higher *jama* claimed, whereas in fact it was not so. The application for review is granted and the appeal will be reheard on the only point referred to." On rehearing the appeal the Subordinate Judge found that the payment pleaded was not proved and restored the finding of the Munsif on that point. Hence the defendant brought this appeal to the High Court on the following grounds :—

First.—That the Court of Appeal below had granted a review of its judgment without good and sufficient cause within the meaning of section 623 of the Code of Civil Procedure.

Second.—That the Court of Appeal below had reversed its previous judgment on review merely on a reconsideration of the evidence dealt with in that judgment, whereas it ought not to have done so.

Third.—That the Court of Appeal below in disposing of the review ought not to have gone beyond the point to which the rehearing of the case was confined, whereas it had, without at all considering that point, reversed its previous judgment on a reconsideration of the evidence.

Dr. *Rash Behari Ghose* and Babu *Bepin Behari Ghose* (junior) for the appellants.

Babu *Sree Nath Dass* and Babu *Promotho Nath Sen* for the respondents.

Dr. *Rash Behari Ghose*.—Objections to an order granting a review can be taken on appeal from the final decree. *Bhyrub Chunder Surmah Chowdhry v. Madhub Ram Surmah* (1). That case was decided under the old Code (Act VIII of 1859), but the rule is the same under the present Code, and the practice has been

uniform. See *Roy Meghraj v. Beejoy Gobind Burral* (1), *Banee Madhub Bose v. Kalee Churn Singh* (2), *Muneeroodeen v. Kadir Buksh* (3), *Koleemooddeen Mundul v. Leerun Mundul* (4), *Joy Kishen Mookerjee v. Parbutty Churn Ghosal* (5) and *Chunder Churn Auggrodany v. Loodunram Deb* (6). The grounds on which an order granting a review may be attacked are laid down in section 629 of the Civil Procedure Code, and no appeal lies from such an order except as provided by that section. But that section deals only with appeals from orders granting a review directly; and it does not say that no objection other than those mentioned may be taken in an appeal against the final decree. The recent case of *Har Nandan Sahai v. Behari Sing* is against my contention. It would seem from the judgment at first sight that the matter dealt with referred to an appeal from an order granting a review; but the report shows that the appeal was an appeal from the final decree, and the decision in that case is not supported by the case of the *Bombay and Persia Steam Navigation Co. v. S. S. "Zuari"* (7) relied on in the judgment. In the Bombay case the appeal was directly from an order granting a review, and it was held that no such appeal was allowed except on the grounds mentioned in section 629. It could not have been intended that an order granting a review, although not made according to law, is not liable to be questioned at all. The order in this case was not according to law. See *Chunder Churn Auggrodany v. Loodunram Deb* (6). *Gopal Das v. Alaf Khan* (8) also shows that an order dismissing an appeal under section 629 can be questioned in an appeal from the final decree.

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Babu *Sree Nath Das* for the respondents.—The propriety of an order granting a review cannot be attacked in final appeal on grounds other than those in section 629. The words “or may be taken in any appeal against the final decree or order made in the suit” clearly limit the grounds of appeal against the order in final

(1) I. L. R., 1 Gale., 197; 23 W. R., 438.

(2) 24 W. R., 337.

(3) 24 W. R., 410.

(4) 24 W. R., 186.

(5) 22 W. R., 183.

(6) 25 W. R., 324.

(7) I. L. R., 12 Bom., 171.

(8) I. L. R., 11 All., 383.

1895 appeal to the grounds stated in the section. The cases of the
 BAHODA *Bombay and Persia Steam Navigation Co. v. S. S. "Zuari"* (1)
 CHURN GHOSE and *Har Nandan Sahai v. Behari Sing* (2) are entirely in my
 v. favour.
 GOBIND The judgment of the Court (PIGOT and STEVENS, JJ.) was
 PRASHAD delivered by
 TEWARY.

PIGOT, J.—The only question in this appeal is whether the decree of the lower Appellate Court must be set aside by reason of the review having been allowed under the circumstances under which it was granted; it was not granted on any of the grounds stated in section 629, and the question which was argued before us is, whether it is competent in final appeal to challenge the propriety of an order granting a review on grounds other than those stated in section 629.

Upon this question the case of *Har Nandan Sahai v. Behari Sing* (2) was cited before us, and we have come to the conclusion that that case properly interpreted must be held to decide that in general final appeal an order for review cannot be challenged save upon the grounds stated in section 629, and we shall follow that case in deciding the question before us against the appellant and in support of the decision of the lower Appellate Court.

In the case of *Har Nandan Sahai v. Behari Sing* (2), the Bombay decision in the case of the *Bombay and Persia Steam Navigation Co. v. S. S. "Zuari"* (1) was treated as the basis of the decision of this Court. No doubt the Bombay case only decided, so far as appears from the report, that an appeal direct from an order granting a review lies only in the cases set forth in section 629. That was a case directly under section 629, but the Judges in the case of *Har Nandan Sahai v. Behari Sing* declared that the Bombay case was directly in point in the case before them. Now, in the Calcutta case, the appeal was not an appeal direct against the order; the order was contested in final appeal upon grounds other than those set forth in section 629; the proceedings after review were set aside by the District Judge on those grounds; and the case

(1) I. L. R., 12 Bom., 171.

(2) *Ante*, p. 3.

was decided by him on the evidence existing on the record previous to the granting of the plaintiff's application for a review. This is just what we are asked on grounds other than those specified in section 629 to order here. This Court held that the District Judge was wrong, set aside his decision, and sent back the case to him to decide the other questions arising in the appeal, that is to decide the case upon the evidence taken after the order of review (see page 4, line 7). The case is therefore a decision that in final appeal the order for review can only be challenged upon the grounds contained in section 629. That is, as urged by the learned pleader for the respondents, that the words in section 629 "or may be taken in any appeal against the final decree or order made in the suit" restrict the grounds of appeal against the order in final appeal to the grounds stated in the section. This no doubt greatly limits the checks and restrictions on the powers of the lower Courts in granting reviews. But just as in the case of orders setting aside *ex parte* decrees, it may well be that the Code does not seek to supervise with very jealous scrutiny the exercise of powers which after all tend to a complete enquiry and consideration of the case upon the merits.

Therefore construing the case of *Har Nandan Sahai v. Behari Sing* in the manner we have done, and following it as we think we ought to do, we must decide this case in favour of the respondents and dismiss the appeal with costs.

F. K. D.

Appeal dismissed.

Before Mr. Justice Pigot and Mr. Justice Stevens.

PROSUNNO KUMAR ADHIKARI AND OTHERS (PLAINTIFFS) v. SARODA
PROSUNNO ADHIKARI AND OTHERS (DEFENDANTS.) *

*Hindu law—Endowment—Powers of Shebait—Alienation of endowed
property.*

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May 21.

Where the father of the plaintiffs, who was a *shebait* of certain *debutter* property, granted a *mourasi mohurari* lease of a portion of that property to

* Appeal from Appellate Decree No. 2269 of 1893, against the decree of J. Pratt, Esq., District Judge of Midnapore, dated the 5th of September 1893 affirming the decree of Babu Rahi Chunder Ganguli, Second Subordinate Judge of that District, dated the 30th of January 1893.

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