

1895  
 ASHARFI LAL  
 v.  
 DEPUTY COM-  
 MISSIONER OF  
 BARA BANKI.

But this fact has never been put upon the record, and cannot therefore be accepted here. But even supposing that the wife was appointed guardian, and that she was guardian at the time the decree of the first Court was made, still the fact remains that the appellant had made party to the suit the Court of Wards, the authority which had the property of the lunatic under its control, and which would have to answer a decree if a decree were made. Even if the guardian were a party, it would not be the guardian who would have to satisfy the decree; the guardian would have to go to the Court of Wards and get the funds to pay with. It is not suggested that the suit was not fully tried out upon the merits, or that any other line of defence could have been raised if the guardian had been party to the suit. The ground, therefore, on which the Judicial Commissioner reversed the decrees of the lower Courts seems to have been of the very flimsiest character, even if it had good technical grounds to go upon, which it had not. Their Lordships will therefore recommend Her Majesty to reverse the Judicial Commissioner's decree, and to restore the decrees of the District Judge. The respondent must pay the costs of the application to the Judicial Commissioner to revise the case, and the costs of this appeal.

*Appeal allowed.*

Solicitors for the appellant: Messrs. *Barrow & Rogers.*

Solicitor for the respondent: *The Solicitor, India Office.*

C. B.

## APPELLATE CIVIL.

*Before Mr. Justice Macpherson and Mr. Justice Banerjee.*

GYANUND ASRAM (OPPOSITE-PARTY) v. BEPIN MOHUN SEN  
 (PETITIONER).\*

1895  
 March 8.

*Appeal—Civil Procedure Code (Act XIV of 1882), sections 629, 536, 538 and 591—Order granting a review in a suit of Small Cause Court nature valued at less than Rs. 500.*

In a suit of a nature cognizable by Small Cause Court and valued at less than Rs. 500, an order granting a review was passed by the Appellate Court.

\* Appeal from Order No. 195 of 1894, against the order of J. Knox-Wight, Esq., District Judge of Hooghly, dated the 10th of March 1894.

without recording any reason for it. An appeal was preferred against that order to the High Court under section 629 of the Code of Civil Procedure :

*Held*, that the order was bad, being in contravention of the provisions of section 626 of the Code of Civil Procedure,

1895  


---

 GYANUND  
 ASRAM  
 v.  
 BEPIN  
 MOHUN SEN.

*Held*, also, upon the objection of the respondent that no appeal lay against the above order, that the appeal was permissible under section 629, the provisions whereof are not controlled or superseded by section 591 of the Code. Questions raised in an application for review are totally different from those raised in the suit ; a review can only be granted on special grounds, and it may well be that, although an appeal is not allowed from the final decree in the suit, an appeal is allowable from an order granting a review, which could reopen the case after it had been disposed of.

THIS appeal arose out of an order granting a review by the District Judge of Hooghly, dated the 10th March 1894. One Bepin Mohun Sen got a money decree for less than Rs. 500 against one Gyanund Asram in the Second Munsif's Court of Hooghly. On appeal the District Judge reversed the judgment of the Court of first instance on the 28th July 1893. On the 11th November, the said Bepin Mohun Sen applied for a review of the judgment of the District Judge. After various postponements, the 16th of March 1894 was fixed for the final hearing of the case. But, on the 10th March, the District Judge, without recording any reason, simply admitted the review. Against this order the opposite-party, Gyanund Asram, appealed to the High Court.

*Babu Nalini Ranjan Chatterjee* and *Babu Jasoda Nandan Pramanik* for the appellant.

*Babu Umakali Mukerjee* and *Babu Srish Chunder Chowdhry* for the respondent.

*Babu Srish Chunder Chowdhry* took a preliminary objection to the hearing of the appeal, on the ground that, as the suit was of a nature cognizable by a Small Cause Court, and valued at less than Rs. 500, no second appeal would lie under section 586 of the Code of Civil Procedure. He also relied upon sections 588 and 591 of the Code.

*Babu Nalini Ranjan Chatterjee* for the appellant.—The order complained against is in violation of section 626 of the Code, and therefore cannot stand. An appeal lies under section 629 of the Code of Civil Procedure from an order passed by the Appellate Court

1895  
 GYANUND  
 ASRAM  
 ?  
 BEPIN  
 MOHUN SEN.

admitting a review, upon the grounds stated in that section, although no second appeal will lie in a suit of a Small Cause Court nature valued at less than Rs. 500. Section 629 appears in the chapter on "Reviews," the proceedings in which are totally different from proceedings in a suit. Section 629 is clear that an appeal will lie from an order admitting a review upon the grounds specified therein. Notwithstanding the provisions of section 586, it has been held that an appeal lies from an order remanding a case in a suit cognizable by a Court of Small Causes. See *Collector of Bijnor v. Jafar Ali Khan* (1), *Mahadev Narsinh v. Ragho Keshav* (2).

It has also been held that an appeal lies from an order granting a review in a Small Cause Court suit. See *Gulam Husen Mahamed v. Musa Miya Hamad Ali* (3).

The judgment of the Court (MACPHERSON and BANERJEE, JJ.) was as follows :—

This is an appeal from an order granting a review of a judgment of the Appellate Court under section 629 of the Code of Civil Procedure.

The suit was one of a nature cognizable by a Court of Small Causes, and the value of the subject-matter of it was below Rs. 500. The suit was tried by the Munsif in his ordinary jurisdiction. After the appeal had been disposed of, the defendant applied for a review of the Appellate Court's judgment. This application was made on the 11th of November 1893. Notice issued upon the opposite side, and, after several adjournments, the 16th March 1894 was fixed for the hearing of the application. On the 10th March the review was allowed and a date fixed for the hearing of the arguments : by which we understand the arguments bearing on the appeal which was to be reheard. Obviously if the case on the 9th was adjourned till the 16th, but was disposed of on the 10th instant without notice to and in the absence of the opposite-party, the provisions of section 626 of the Code were contravened, because no opportunity was granted to the opposite side to appear.

(1) I. L. R., 3 All., 18.      (2) I. L. R., 7 Bom., 292.

(3) I. L. R., 8 Bom., 260.

There is an affidavit on the part of the respondent before us that, on the 9th, the Judge made a verbal order postponing the case till the 10th.

1895

---

 GYANUND  
ASRAM

 v  
BEPIN  
MOHUN SEN.

This affidavit is uncontradicted, and it would seem that the 16th, which was the date recorded, was written either by mistake or in ignorance of the verbal order.

But however this may be, the provisions of section 626 have been clearly contravened in another respect. That section requires that the Judge shall record with his own hands his reasons for granting an application for review. In this case there is no such record, there is only a bare order, without any reasons, that the review is allowed. As the review was applied for on various grounds, such as the discovery of new evidence and the omission of the Court to consider and give due weight to some of the evidence which had been already given, it was important for the opposite side to know the exact grounds on which the application was granted.

We must hold, therefore, that the order being in contravention of section 626, cannot stand.

A preliminary objection was taken by the respondent that no appeal lies against the order complained of, because section 586 prohibits a second appeal in the suit; and because, also, the order is not one of those specified in section 588, and that section and section 591 prohibit an appeal from any order passed by a Court in the exercise of original or appellate jurisdiction other than those specified. Conceding this, it seems impossible to get over the language of section 629, which provides that an objection to an order granting an application for review "may be made at once by an appeal against the order granting the application or may be taken in any appeal against the final decree or order made in the suit." Section 623 contemplates applications for review of judgments in suits in which no appeal lies as well as in suits in which an appeal does lie. It may be that section 629 would not give a right of appeal against the final decree in a suit in which an appeal was expressly prohibited by the other sections of the Code: but the person aggrieved would still have the alternative remedy given by that section of appealing against the order granting the application for review.

1895  
 GYANUNO  
 ASRAM  
 v.  
 BEPIN  
 MOHUN SEN.

The questions raised in applications for review are totally different from those raised in the suit. A review can only be granted on special grounds, and it may well be that, although an appeal is not allowed from the final decree in the suit, an appeal is allowed from an order granting a review which would reopen the case after it had been disposed of. That the provisions of section 629 are not controlled or superseded by section 591 appears from this that, in appealable cases, an appeal is certainly allowed from the order, although the order is not one of those specified in section 588.

The order appealed against must be set aside ; and the case sent back to the District Judge in order that he may hear and dispose of the application in the manner directed in Chapter XLVII of the Code of Civil Procedure.

S. C. G.

*Case remanded.*

*Before Mr. Justice Prinsep and Mr. Justice Ghose.*

1895  
 April 24.

NOWNIT LAL (PLAINTIFF) v. RADHA KRISTO BHUTTACHARJEE  
 AND OTHERS (DEFENDANTS.)\*

*Sale for arrears of revenue—Suit to set aside sale—Act XI of 1859, section 5—Attachment by order of Civil Court—Latest day of payment, Attachment subsequent to.*

In a suit to set aside the sale of an estate for arrears of revenue, one of the grounds taken by the plaintiff was that the estate, which was under attachment by an order of the Civil Court at the time of the sale, was sold without due observance of the formalities prescribed by section 5, Act XI of 1859. The date fixed for payment of the arrears for which the estate was sold was 7th June 1890. The date of attachment was 2nd August following.

*Held*, that section 5 of Act XI of 1859 provides for cases in which the attachment has been made at least fifteen days before the last date of payment for which it is sought to bring the estate to sale. That section would not therefore apply to a case like the present, in which the attachment was after the last day of payment and after the estate had become liable to sale for arrears of Government revenue. *Bunwari Lall Sahu v. Mohabir Persad Singh* (1) referred to.

\* Appeal from Original Decree No. 372 of 1893, against the decree of Khajah Syed Mahomed Fokhraddin Hossein, Subordinate Judge of the third Court, Patna, dated 23rd of August 1893.

(1) 12 B. L. R., 297 ; L. R., 1 I. A., 89.