

## APPELLATE CIVIL.

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*Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Birch.*

1875

Sept. 17.

IN THE MATTER OF THE PETITION OF LUKHYKANT BOSE.\*

*Superintendence of High Court—24 & 25 Vict., c. 104, s. 15—Act XXIII of 1861, s. 27.*

Under s. 15 of 24 & 25 Vict., c. 104, the High Court will not interfere with the decisions of the Courts below in cases in which a special appeal is forbidden by s. 27 of Act XXIII of 1861, and where there is no question of jurisdiction involved (1).

THE plaintiff's case was, that she had gone to live with the defendant as his mistress, on the defendant executing an agreement to her to the effect that, in consideration of her living with him, he would maintain her and give her jewels and effects worth Rs. 155, and that if he did not give her the jewels and her maintenance, or if he deserted her, he was to make good the price of the jewels, Rs. 155, and give her Rs. 200 in cash. The plaintiff was deserted by the defendant, and hence her suit to recover these sums of money.

The Courts below decreed the plaintiff's suit; the Deputy Commissioner of Nowgong on appeal holding that there was nothing improper in the agreement.

On the application of the defendant, a rule was issued for the plaintiff to show cause why the decree of the Deputy Commissioner in her favor should not be set aside, and the record of the case was at the same time sent for. This rule subsequently came on for argument before Kemp, J., who decided that the contract entered into between the parties was illegal and

\* Appeal under s. 15 of the Letters Patent from the order of Kemp, J., dated the 4th September 1874, in Rule No. 1054 of 1874.

(1) As to the cases in which the High Court will interfere under the powers conferred by s. 15 of the High Courts' Act, see note to *Tej Ram v. Harsukh*, I. L. R., 1 All.

immoral, and therefore void. The decisions of the lower Courts were therefore set aside, and the rule made absolute.

The plaintiff appealed under s. 15 of the Letters Patent from the decision of Kemp, J., on the ground that the High Court had no power, under s. 15 of the Charter Act, to interfere with and set aside the judgments of the lower Courts in a case where no special appeal lay to the High Court.

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Baboo *Bhowanichurn Dutt* for the appellant.—The High Court cannot, under the Charter Act, interfere in any case, where the suit could have been brought in the Small Cause Court, and where a special appeal is forbidden by s. 27 of Act XXIII of 1861. There is no question of jurisdiction in the case, and the lower Courts being competent to try the question of the legality of the contract, their decision was final under the law. The judgment of Kemp, J., must be set aside, and the rule discharged. See *Karim Sheikh v. Mohhoda Soondery Dasse* (1).

Baboo *Umbica Churn Bose* for the respondent.—The High Court has the power, under the Charter Act, to interfere and set the lower Courts right, where they commit any error of law. The right of appeal having been taken away in such cases by s. 27 of Act XXIII of 1861, may be the very reason why power is given to this Court in the Charter Act to superintend the lower Courts and revise their decisions when they fall into any error.

The judgment of the Court was delivered by

GARTH, C.J.—We are of opinion that this rule ought to be discharged, and the appeal against Kemp J.'s decision allowed. It is one of those cases in which the suit might have been brought in the Small Cause Court, and s. 27 of Act XXIII of 1861 forbids any special appeal to this Court. That being so, the question is, whether the Munsif having entertained the suit and

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decided it, and the Subordinate Judge having heard it on appeal, we have any right to interfere under s. 15 of the Charter Act, not for the purpose of enquiring whether there was any jurisdiction in the lower Court to entertain the suit (about which there can be no doubt), but for the purpose of rehearing the case upon a point of law, which the Judges in the Courts below had a right and were bound to determine, and which would, if the case had been appealable to this Court, undoubtedly have been a good subject of appeal. This, as the late Chief Justice Couch very truly observed in *Karim Sheikh v Mohhoda Soondery Dasse* (1), would be acting in direct contravention of s. 27 of Act XXIII of 1861, and usurping under this 15th clause of the Charter Act a right of appeal, which, by that 27th section, is in express terms taken away. This was a case which the Munsif's Court had clearly a jurisdiction to entertain. The question of the illegality of the contract and the question of limitation were such as the Munsiff had a right to try and was bound to try at the hearing of the suit; and questions which it was especially his province to decide; such a case, in my opinion, is not one for which cl. 15 of the Charter Act was intended to provide. The object of that section was to enable the High Court to control the lower Courts or to put them in motion, when, on the one hand, they exceed their jurisdiction, by entertaining suits which they have no right to entertain, or on the other hand refuse to exercise powers which they are bound by law to exercise. That being our view, and there being already strong authority in these Courts in favor of that view, we have no doubt whatever that this appeal should be allowed, and the rule granted by Kemp, J., discharged with costs.

*Appeal allowed.*

(1) 15 B. L. R., 111.