

APPELLATE CIVIL.

FULL BENCH.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Parsons
and Mr. Justice Fulton.

1893.
November 22.

RAMSING (ORIGINAL PLAINTIFF), APPLICANT, v. BABU KISANSING
AND ANOTHER (ORIGINAL DEFENDANTS), OPPONENTS.*

Dekkhan Agriculturists' Relief Act (XVII of 1879), Sec. 74†—Special Judge—Review—Power of Special Judge to review his own decree—Application of Civil Procedure Code (XIV of 1882) to proceedings of Special Judge—Civil Procedure Code (Act XIV of 1882), Sec. 622.

The Special Judge appointed under the Dekkhan Agriculturists' Relief Act (XVII of 1879) (the defendants not appearing) reversed, in revision under section 53 of that Act, the decree of a Subordinate Judge and passed a decree for the plaintiff. One of the defendants, who, it appeared, had not been served with notice of the previous application for review, subsequently applied to the Special Judge to review his decree, and that application was granted on the ground that the applicant had not had notice of the former review. On this subsequent review the Special Judge discovered that he had made a mistake with reference to the date of certain documents, and that this mistake had led him to a wrong conclusion upon the merits of the case. He consequently reversed his former order and dismissed the suit, confirming the original decree of the Subordinate Judge. The plaintiff then applied to the High Court under its extraordinary jurisdiction (section 622 of the Civil Procedure Code (Act XIV of 1882)).

Held, that in granting a rehearing the Special Judge had exercised a reasonable discretion with which the High Court could not interfere in its extraordinary jurisdiction.

The Civil Procedure Code (Act XIV of 1882) is not applicable to proceedings before the Special Judge, and the conduct of such proceedings rests within his discretion.

Badaricharya v. Ramchandra (1) approved.

PARSONS, J.:—The Special Judge cannot under the Dekkhan Agriculturists' Relief Act (XVII of 1879) review his decree and order a new trial on the ground of discovery of fresh evidence, but he has discretionary power to review his decree in order to correct a mistake into which he has fallen.

* Application No. 4 of 1893 under extraordinary jurisdiction.

† Section 74 of the Dekkhan Agriculturists' Relief Act (XVII of 1879):—

74. Except so far as is inconsistent with this Act, the Code of Civil Procedure shall apply in all suits and proceedings before Subordinate Judges under this Act.

(1) See *supra*, p. 113.

THIS was an application under extraordinary jurisdiction—section 622 of the Civil Procedure Code (Act XIV of 1882)—against the decision of Ráo Bahádur Mahádeo Govind Ránade, Special Judge under the Dekkhan Agriculturists' Relief Act (XVII of 1879).

1893.

RÁMSING
v.
BÁBU
KISANSING.

The suit was brought by the plaintiff against the defendants in the Court of the First Class Subordinate Judge of Ahmednagar to recover Rs. 325 alleged to have been lent for the marriage expenses of the first defendant. The plaintiff also claimed Rs. 92 as interest.

Defendants denied the loan of Rs. 325, and as to Rs. 225 lent for marriage expenses they pleaded that it had been repaid by postal money orders. They denied their liability for interest, there having been no agreement to pay interest.

The First Class Subordinate Judge found that the plaintiff had not proved the alleged loan of Rs. 325, that the defendants had proved payment of Rs. 225 as alleged by them, and that nothing was due to the plaintiff. He, therefore, dismissed the suit.

The plaintiff thereupon applied to the Special Judge under section 53 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) for revision of the decree. Notices of the application were issued to the defendants, but neither of them appeared on the day of the hearing.

The Special Judge found (*inter alia*) that two money orders, dated respectively 30th November, 1888, and 29th April, 1889, and aggregating Rs. 225, had been sent by defendants to plaintiff; but that the defendants had subsequently written a series of letters asking for more time for repayment of the loan, these letters being dated 5th August, 9th October, 19th October, 29th October, and 8th November, 1889, respectively. He, therefore, found that the defendants owed money to the plaintiff long after the sum of Rs. 225 had been paid off, and accordingly reversed the decree of the lower Court, and decreed Rs. 325 to plaintiff with costs.

The second defendant, who had not been served with the notice issued as above mentioned on plaintiff's application for revision of the decree of the Subordinate Judge, then applied to the

1893.

RÁMSING
v.
BÁBU
KISANSING.

Special Judge for a review of the decree passed by himself. His application was granted, and on review and on reconsideration of the evidence the Special Judge found that the letters sent by defendants to plaintiff were not, as he had supposed, dated 1889, and, therefore, not subsequent to the dates of the money orders aggregating Rs. 225, but had been written in 1888, and were, therefore, prior to the despatch of the money orders. On review, he confirmed the decree of the Subordinate Judge.

The plaintiff then applied to the High Court under its extraordinary jurisdiction, contending (*inter alia*) that the Special Judge had no jurisdiction to review his own order, and a rule *nisi* was granted calling upon the defendant to show cause why the order of the Special Judge should not be set aside.

Dáji A'báji Khare (for the plaintiff) in support of the rule.

Báláji A'báji Bhágrat (for the defendants) showed cause.

The rule came on for hearing before Sargent, C. J., and Telang, J., who ordered it to be argued before a Full Bench.

Dáji A'báji Khare, for the plaintiff, in support of the rule:—The Special Judge had no jurisdiction to review his own decision—*Bábáji Pátloji v. Bábáji Mahádu*⁽¹⁾. Section 74 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) makes the provisions of the Civil Procedure Code applicable only to proceedings before the Subordinate Judge, and not to those before the Special Judge. Therefore the Special Judge cannot grant a review—*Vishvanáth v. A'ba*⁽²⁾; *Badarichárya v. Rámchandra*⁽³⁾. Admitting, however, that the Special Judge had jurisdiction to review his own decision, we submit that in the present case a review was granted on insufficient grounds, namely, that the second defendant who applied for it had no notice of the first application for revision. There is no inherent power in a Court to grant a review of its own decision. It must be given by statute—*Sivu v. Chenamma*⁽⁴⁾; *Reasut Hasein v. Hadjee Abdoollah*⁽⁵⁾.

[SARGENT, C. J.:—In the case of an *ex-parte* decree the Court has the power to review the former proceedings—*Mánku v. Sitárám*⁽⁶⁾.]

(1) I. L. R., 15 Bom., 650.

(2) P. J., 1886, p. 11.

(3) See *supra*, p. 113.

(4) 5 Mad. H.C. Rep., 417.

(5) I. L. R., 2 Calc., 131.

(6) I. L. R., 18 Bom., 142.

The fact that the Civil Procedure Code gives a power to review, justifies the inference that the Courts have no inherent power to review. If they had such a power, the Code would not have made special provision for it. Further, sections 53 and 54 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) lay down the procedure to be adopted by the Special Judge, and they do not make any provisions for review.

The whole decree ought not to have been set aside because the review was granted at the instance of one of the defendants only. With respect to the defendant who had not so applied, the decree ought to stand—*Mánaku v. Sitárám*⁽¹⁾.

Báláji A'báji Bhágvat for the opponents (original defendants) showed cause:—The Special Judge granted the review because, as he says in his judgment, on the previous occasion he had made a mistake as to dates. Under these circumstances he was right in granting a review—*Badarichárya v. Rámchandra*⁽²⁾. He was also right in setting aside the whole decree. On review the Court reconsiders the whole case—*In re Swire*⁽³⁾.

SARGENT, C.J.:—It is not quite clear whether the Special Judge under the Dekkhan Agriculturists' Relief Act (XVII of 1879) reheard the case on the ground that notices had not been served on the second defendant or on the ground of mistake as to the dates of certain important documents in the case. In *Badarichárya v. Rámchandra*⁽²⁾, it was held that the Civil Procedure Code was not applicable to proceedings before the Special Judge, and that the conduct of such proceedings was within his discretion. That is, I think, a correct view of section 74 of the Dekkhan Relief Act.

Here whatever was the cause of this rehearing, the exercise of the discretion was, in my opinion, a reasonable one and cannot be interfered with in any view of our extraordinary jurisdiction. It is not necessary for me to express an opinion whether a rehearing could be granted on the ground of new evidence, which was the question in *Bábáji bin Pátteji v. Bábáji bin Mahádu*⁽⁴⁾. The rule must, therefore, be discharged and the decree of the Special Judge confirmed with costs.

(1) I. L. R., 18 Bom., 142.

(2) See *supra*, p. 113.

(3) 30 Ch. D., 244 at p. 247.

(4) I. L. R., 15 Bom., 650.

1893.

RÁMSING
v.
BÁBU
KISANSING.

1893.

RÁMSINGH
v.
BÁBU
KISANSING.

FULTON, J.:—I concur.

PARSONS, J.:—As one of the Judges who decided the case of *Bábaji bin Pátloji v. Bábaji bin Máhadu*⁽¹⁾, I wish to say that I adhere to that decision and consider it to be correct, *viz.*, that a Special Judge cannot under the Dekkhan Agriculturists' Relief Act review his decree and order a new trial on the ground of discovery of fresh evidence. But that is a very different thing from saying that he cannot review his decree at all. In the present case the Special Judge, on the application of the plaintiff and after issuing notices to the defendants, reversed the decree of the Subordinate Judge. He was led to do so by the date of certain exhibits which he considered was the year 1889. At the time he was under the impression that notices had been duly served on all the defendants. As a fact, however, the second defendant had not been served, and on his application the Special Judge granted a review of judgment. At the rehearing the Special Judge found that he had been mistaken in supposing that the above-mentioned exhibits were passed in 1889, and that they were really passed in 1888. His original decree, therefore, being founded on a mistake, he reversed it, and thus left the original decree of the Subordinate Judge to stand. I think that the Special Judge had under these circumstances a discretionary power to review his decree in order to correct the mistake into which he had fallen. To adopt the language used in *Badarichárya v. Rámchandra*⁽²⁾, "the granting a review in the present case on the ground of mistake was a most reasonable exercise of such discretion."

(1) I. L. R., 15 Bom., p. 650.

(2) See *supra*, p. 113.