

(1922) 11 CAL CK 0008
In the Calcutta High Court

Basanta Kumari Gupta and Others

APPELLANT

Vs

Abhoy Sankar Sen and Others

RESPONDENT

Date of Decision : 14-11-1922

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 7, Order 9 Rule 9, 151

Citation : AIR 1923 Cal 450 : 73 Ind. Cas. 306

Hon'ble Judges : B.B. Ghose, J

Bench : Single Bench

Judgement

B.B. Ghose, J.—This Rule was obtained by the plaintiffs for revision of an order passed on appeal by the District Judge of Dacca, dated the 23rd September 1921, from an order of the Munsif of the same place, dated the 7th February 1921, by which he set aside the order of dismissal of a suit and restored it for hearing. What happened was that the suit had been proceeded with for a considerable time and, as the learned Munsif observes, was advanced to some extent and that the plaintiffs had spent a good deal of money for it. The suit related to establishment of the plaintiffs' title to a piece of land and if the "plaintiffs" allegations in the plaint are true, the act of the defendants would affect their rights to a very great extent. On the last occasion when the suit came up for hearing before the Munsif it so happened that the two Pleaders engaged for the plaintiffs were both absent. The Munsif dismissed the suit for default. There was an application for restoration of the suit shortly afterwards under Order IX, Rule 9, Civil Procedure Code. But a difficulty was found in proceeding with the application under that Rule as one of the plaintiffs happened to be present in person in Court when the order for dismissal was made. This difficulty felt by the Munsif was overcome by his allowing the plaintiffs to alter their application for restoration of the suit to one for review of his previous order and this, it appears, was not objected to by the defendants. Then the Munsif, treating that application as an application for review under Order XDVII, Rule 1, Civil Procedure Code, set aside his previous order of dismissal of the suit. He states in his judgment, "I set aside the order of dismissal of the suit and restore

the suit in the interest of justice and in the exercise of inherent jurisdiction of this Court as Section 151 of the CPC gives me based on the application under Order XLVII, Rule 1, Civil Procedure Code." Then he imposed certain terms on the plaintiffs as regards payment of costs.

2. The defendants appealed to the District Judge and on appeal the learned Judge held that the plaintiffs had failed to show that they had any sufficient cause for applying for review of judgment and thereupon allowed the appeal and set aside the order of the Munsif, restoring the original suit. The question raised by the petitioners is that the appeal to the District Judge was incompetent; having regard to Order XLVII, Rule 7 of the Code of Civil Procedure. It is contended by the opposite party that there was an appeal to the District Judge, because the order of the Munsif contravened the provisions of Rule 4, Sub-rule (1) of Order XLVII and, secondly, that the order of the Munsif restoring the suit having been passed without jurisdiction, I should not in any case restore the order of the Munsif. With regard to the last contention, I am of opinion that, assuming that the Munsif's order was not in strict accordance with the procedure laid down in the Civil Procedure Code, the result has been to remove a great hardship and it was as he himself has put it, "in furtherance of justice." If I were asked to set aside this order in revision I do not think I should have interfered with it in the exercise of my discretion. If, however, as the learned. Vakil for the opposite party contends, the appeal to the District Judge was competent, this Court can not revise the order of the District Judge. It seems to me that there was no appeal from the order of the Munsif to the District Judge under the provisions of the Code of Civil Procedure. The learned Munsif took into consideration the facts under which he made his previous order and although, according to the provisions of the Code, there might not have been sufficient reasons for entertaining an application for review of judgment, there was no appeal from that order, however erroneous it might be, as the grounds on which such an appeal may be entertained are restricted by the provisions of Rule (7), Order XIVII. I do not think that the order of the Munsif contravenes any of the provisions of Order XLVII, Rule 4. Moreover, the learned Munsif purported to have exercised the inherent jurisdiction of the Court u/s 151 of the Code of Civil Procedure. There could not be any appeal to the District Judge against an order passed u/s 151. I, therefore, hold that the appeal to the District Judge was incompetent and the order of the District Judge passed on appeal must, therefore, be set aside as without jurisdiction and that of the Munsif restored.

3. Under the circumstances, however, the petitioners must pay the costs of the appeal before the District Judge to the opposite party.

4. I make no order as to costs in this Court.