

(1916) 05 CAL CK 0036
In the Calcutta High Court

Gour Sundar Bhounmik and Others

APPELLANT

Vs

Rakhal Raj Bhounmik and Others

RESPONDENT

Date of Decision : 03-05-1916

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 8

Citation : 34 Ind. Cas. 592

Hon'ble Judges : Lancelot Sanderson, C.J.; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

Lancelot Sanderson, C.J.—The learned Vakil at the opening of his remarks for the purpose of showing cause stated that this was rather a peculiar matter. I entirely agree with him and I most sincerely hope that it is not only a peculiar matter, but also an exceptional matter, because the facts relating to the proceeding in this case are truly amazing—there is no other word for them. The action was brought in November 1906, very nearly ten years ago by the plaintiff for the recovery of certain land. The Court of first instance gave the plaintiff a judgment. Then there was an appeal to the first Appellate Court. That Court varied the judgment of the first Court by declaring that the plaintiff and the defendants were joint owners of the land. Then there was an appeal to the High Courts and the High Court, consisting of Mr. Justice Brett and Mr. Justice Richardson allowed the appeal and restored the judgment of the Court of first instance, and thereby declared that the plaintiff was entitled to the possession of the land in question.

2. Unfortunately by mistake, it has not been made plain to me how the mistake arose—the decree gave the plaintiff something more than he asked for, inasmuch as it not only declared that the plaintiff was entitled to the possession of the land but it also declared that he was entitled to the possession of a building which was upon the land. That was a matter which was obviously an error—and which, in my opinion, ought to have been set right as soon as the parties saw the decree. If that had been brought to the attention of the learned Judges before the decree was signed, it could have been set right in five minutes. Instead of that, in

consequence of that mistake which was made in December 1912, proceedings have been going on in this Court from December 1912 down to May 1916. I think I am justified in saying that the proceedings in this case are nothing short of amazing. What happened then is this: An application was made to Mr. Justice Richardson, the other learned Judge, Mr. Justice Brett, having by this time left the Court. That was made in April 1913, and Mr. Justice Richardson granted a Rule limiting it to this particular point, and calling upon the opposite party to show cause why the judgment and decree of this Court, dated the 12th December 1912, should not be set aside or amended or why such other order should not be made as to this Court might seem fit, on the ground that in giving the plaintiff a decree for the structures on the land this Court went beyond the reliefs claimed in the plaint. So that the rule was granted on that one point only. In June 1913, this Rule was argued before Mr. Justice Richardson; and after argument he made the Rule absolute. I agree with what fell from my learned brother Mr. Justice Mookerjee, during the course of the argument in the case, that there was an end of the matter as soon as the Rule was made absolute, and in accordance with that Rule the decree would, as a matter of fact, have been amended in respect of the point which was mentioned in the Rule that was granted. For some reason or other Mr. Justice Richardson was persuaded to re-hear the case under Order XLVII, Rule 8, of the CPC and after hearing the case he made the order which has been referred to and which is to this effect: "The judgment will, therefore, be altered in this way, that for the words, "with such structures as may be standing on the land", the following will be substituted, that the defendants do remove the structures from the land within two months from the date of this order. In the event of their failing to do so the plaintiff will be at liberty to remove them at the costs of the defendants to be realised in execution of the decree". A corresponding alteration will be made in the decree." Then he went on to say: I make no order as to costs. The mistake should have been brought to notice before the decree was signed." Well, some ingenious person then thought of the point that Mr. Justice Richardson had no jurisdiction to re-hear the case sitting by himself, and although he had jurisdiction to grant the Rule and to make the Rule absolute and thereby to make an order by which the judgment would be amended, still he had no jurisdiction to re-hear the case in the proper sense of the word, as he by himself could not constitute a Division Bench. Therefore, this point was taken and an appeal from his decision was instituted and it was heard in this Court by the late Chief Justice and Mr. Justice Nalini Ranjan Chatterjea, and they decided that he had no jurisdiction to re-hear the case, because he was not a Division Bench, and they directed that the appeal should be re-heard. As a result of that, two other learned Judges were called upon to hear this appeal, and Mr. Justice Holmwood and Mr. Justice Mullick heard it on the 24th of November 1915, some two years after the order which was made by Mr. Justice Richardson, and having heard it they made an order identical in terms with the one that was made by Mr. Justice Richardson in the month of June 1913. The parties were not satisfied even then, but some of the defendants came here and obtained a Rule upon the ground that Mr. Justice Holmwood and

Mr. Justice Mullick had not re-heard the case, If I may say so with every respect to the learned Judges, I think they took a reasonable view of the matter. What they did was, they said that the whole of this matter arose from an obvious error, upon which the Rule was granted for review by Mr. Justice Richardson, and they confined themselves to that error and declined to go any further and said they had discretion in the matter. It is argued by the learned Vakil that they were wrong in so doing and he wishes us to make the Rule absolute, so that this case may be re-heard by two other learned Judges of this Court.

3. All I can say, speaking for myself, is this as far as I can understand the proceedings, when Mr. Justice Richardson made that Rule absolute in June 1913, by reason of which the judgment and the decree would, as a matter of course, be amended in the way he intended them to be amended and in the way he intended them to be drawn up, from that moment every other proceeding was superfluous. If we were to make this Rule absolute it would be a travesty of justice to which I will not be a party.

4. Therefore, in my opinion, this Rule ought to be discharged with costs-hearing-fee two gold mohurs.

Mookerjee, J.

5. I agree that the order we are invited to review is substantially correct, notwithstanding the extraordinary errors which have characterised the proceeding in its later stages.

6. The suit was instituted so far back as the 12th November 1906 for declaration of title to land and for recovery of possession thereof. It was decreed in the Court of first instance on the 4th January 1908. On appeal by the defendants, the Subordinate Judge modified this decree. The result was that the present appeal was lodged in this Court on the 5th February 1909 by some of the defendants. The plaintiff thereupon presented a petition of cross-objection. The appeal was heard in the first instance by Mr. Justice Brett and Mr. Justice Richardson on the 12th December 1912; they dismissed the appeal and allowed the cross-objection, so that the decree of the primary Court was restored. The decree of this Court, however, contained a provision for possession of the structures on the land in a manner not contemplated by the plaint. The defendants took advantage of this error, and presented an application for review of judgment to Mr. Justice Richardson, on the 28th April 1913, after Mr. Justice Brett had ceased to be a member of the Court. Thereupon, Mr. Justice Richardson issued a Rule calling upon the opposite party to show cause why the judgment and decree, dated the 12th December 1912, should not be set aside, or amended or why such other order should not be made as might seem fit, on the ground that, in giving the plaintiff a decree for the structures on the land, the Court had gone beyond the reliefs claimed in the plaint. This Rule was heard by Mr. Justice Richardson on the 5th June 1913, as he was obviously competent to do, and was made absolute, with the consequence that the judgment and decree, stood amended in the

manner stated in the order for issue of the Rule. Mr. Justice Richardson, however, not only made the Rule absolute, but proceeded to act under Rule 8, Order XLVII, of the Civil Procedure Code. That Rule provides that when an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit." Mr. Justice Richardson apparently thought that it was incumbent upon him to re-hear the case under Rule 8 of Order XLVII. The result of the re-hearing was that the alteration already mentioned was made in the judgment and decree. The substance of the matter was that the order made on the re-hearing of the case was identical with the order whereby the Rule was made absolute. An appeal was then preferred under Clause 15 of the Letters Patent against the judgment of Mr. Justice Richardson, and was heard by Sir Lawrence Jenkins, C.J., and Mr. Justice N.R. Chatterjea. They allowed the appeal on the ground that Mr. Justice Richardson had no jurisdiction to re-hear the case under Rule 8 of Order XLVII; but they not only cancelled that portion of his order, but proceeded to direct that the appeal should be re-heard. At the re-hearing which took place before Mr. Justice Holmwood and Mr. Justice Mullick the question was raised, whether the appeal was to be re-heard in its entirety or whether the ground urged before Mr. Justice Richardson in support of the application for review was the only ground open for consideration. The Court came to the conclusion that the latter course should be pursued. The result was that Mr. Justice Holmwood and Mr. Justice Mullick proceeded to make a decree identical with what had been made by Mr. Justice Richardson when he made the Rule for review absolute. We are now invited to set aside on review the decree made by Mr. Justice Holmwood and Mr. Justice Mullick on the ground that it was incumbent upon them to re-hear the entire appeal. In my opinion there is no foundation for this contention.

7. In the first place, it is indisputable that a revision may be granted either as to the entirety of the order assailed or as to a portion only thereof. This was laid down by the Judicial Committee so far back as 1867 in the case of *Bhugwandeem Doobey v. Myna Bae* 11 M.I.A. 487. : 9 W.R. 23 (P.C.) : 2 Suth. P.C.J. 124 : 2 Sar. P.C.J. 327 : 20 E.R. 184, where Sir James Colville observed that "the Judges who might have made a final order, granting or rejecting the application in toto or in part, were not incompetent to make the qualified order which they did make, leaving in the Court, which was to review the decision, a discretion as to the extent to which the review should be carried." This view has been adopted by this Court in 1864 in the case of *Hurro Chunder Chuckerbutty v. Ramkissore ChndlterbuMy* W.R. (1864) 141 and has been consistently followed in a long series of decisions [*Byjnath Sahoy v. Wuzeer Narain* 24 W.R. 427, *Dhurondhur v. Agra Bank* 5 C. 86 : 4 C.L.R. 434, *Thacoor Prosad v. Baluck Earn* 12 C.L.R. 64, *Hurban Sahye v. Thacoor Purshad* 9 C. 209 : 7 Ind. Jur. 306 : 5 Shome L.R. 22 and *Bhubaneshwari Keor v. Ajodhya Singh* 11 Ind. Cas. 102 : 15 C.L.J. 339]. Reliance has been placed on behalf of the petitioner on the observation in the case of *Sainal Ranchod v. Dullabh Dvarka* 10 B.H.C.R. 360, that when a review of

a decision has been admitted, the whole case is thereby re-opened-an observation quoted with approval in the case of Emperor v. Narayan 32 B. 111 : 9 Bom. L.R. 789 (F.B.) : 6 Cri.L.J. 164 : 2 M.L.T. 414. I am not prepared to accept this comprehensive statement as an accurate exposition of the law. Rule 8 of Order XLVII, which reproduces Section 630 of the Code of 1882, clearly leaves it optional with the Court to determine whether when a review is granted, the case should be re-opened in part or in its entirety. It is obvious that any other view might lead to grave inconvenience, if not injustice. It is conceivable that the different points in a case may be so inseparably connected with each other, that if the decision on one point is set aside it becomes essential in the interests of justice that the whole case should be re-opened. On the other hand, cases are equally conceivable in which the different points may be so distinct, that re-consideration of one of those points may not necessitate the re-examination of the other points. Consequently, the view cannot be supported on principle that whenever an application for review is granted, the entire case must of necessity be re-opened and re-considered. This view is supported by the decisions in Sadar ud-din v. Ekram-ud-din 20 Ind. Cas. 670 : 18 C.W.N. 22 : 19 C.L.J. 225, Janaki Nath v. Prabhasini Dasi 30 Ind. Cas. 898 : 19 C.W.N. 1077 : 22 C.L.J. 99 : 43 C. 178, Vadilal v. Fulchand 30 B. 56 : 7 Bom. L.R. 664 and Gopala Aiyar v. Ramasami 31 M. 49 : 2 M.L.T. 519 : 17 M.L.J. 603. These cases show that the Court may, in its discretion, direct that the whole case be reopened, if it is necessary, in the interests of justice, that such a course should be adopted, but they are not authorities for the proposition that whenever a review is granted on a particular point, the whole case must be re-opened. The facts of the case before us afford a good illustration, why the contention of the petitioner should not be accepted. The point whereon the review was sought and granted, was absolutely distinct from the other points in the case. The question was, whether the plaintiff should be allowed a decree for possession of the structures on the land or whether the defendants should be reserved liberty to remove them. The determination of this question did not, in any way, affect the other points in the case; it was also conceded that the erroneous order in the decree, in this behalf had been made by an oversight. Clearly, it was not necessary in the interests of justice that if the decree were modified in this respect, the whole case should be re-opened. But I am also of opinion that the case was concluded when Mr. Justice Richardson made the Rule absolute, and that there was nothing further to re-consider or re-hear. Although, therefore, in this view, the judgment now under review was passed by Mr. Justice Holmwood and Mr. Justice Mullick in an appeal which had been concluded by a final decree made by Mr. Justice Richardson, still it is not necessary for us to interfere, as it merely repeats the decision of Mr. Justice Richardson. This Rule must accordingly be discharged with costs.