

**(1927) 07 PAT CK 0014**  
**In the Patna High Court**

Mt Maharup Kuer

APPELLANT

Vs

Mahabir Singh and Others

RESPONDENT

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**Date of Decision :** 22-07-1927

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 115  
Government of India Act, 1915 — Section 107

**Citation :** AIR 1928 Patna 111

**Hon'ble Judges :** Wort, J

**Bench :** Division Bench

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**Judgement**

Wort, J.—In this case the petitioner brought a suit in the learned Munsif's Court of Samastipur for a declaration regarding timber growing on three tauzis of which the petitioner was part proprietor. It appears that these tauzis were granted by lease to one Charles Robert Webb for five years terminating in the year 1927. During the currency of that lease it was assigned to defendant 1. It would also appear that defendant 1 either had or was threatening at the time of the commencement of the suit against him to cut down certain trees growing on this land. An application was made before the learned Munsif for a temporary injunction restraining the defendant from cutting the timber during the pendency of the suit. The Munsif rejected the application, whereupon there was an appeal to the District Judge. He dismissed the appeal being of the opinion that compensation would be a sufficient remedy, there being in his view no irreparable damage to the plaintiff.

2. Now this Court is asked to interfere with the order of the learned District Judge either u/s 115, Civil P.C., or Section 107, Government of India Act. Now, in my opinion, this case does not come u/s 115, because, although the orders of the learned District Judge and the learned Munsif may be wrong both in law and in fact, yet there was no want of jurisdiction in their making those orders. As I have stated, this Court is also urged to exercise its powers u/s 107, Government of India Act. In my opinion Section 107, would equally not apply had not there been abundant authority to the contrary, and I must, therefore, assume that the

view I hold of Section 107 is wrong.

3. There is authority, as I have already indicated, for the proposition that the powers of a High Court u/s 107 are not merely administrative but judicial also, and they have been called in aid on many occasions on which the Court has held that an order was so bad on the face of it as to be in a sense a denial of justice. There have been a large number of authorities quoted one of which is the case of *Brindatan Chander Choubey v. Gour Chandra Ray* [1920] 1 P.L.T. 407 in which it was held that it is the privilege and prerogative of a High Court, once a record is before it which is erroneous and so erroneous as manifestly to amount to an injustice to exercise its powers of superintendence to revise such order, or set it aside and direct such further proceedings to be taken as justice may require. Now the question that arises in this case is whether the order of the learned District Judge was so manifestly bad as to be in a sense a denial of justice.

4. One thing certain can be stated and that is, if the defendant, always assuming that the plaintiff has a right to this timber, proceeds to destroy it by cutting it down then the whole subject-matter of the action will disappear and the action will consequently be infructuous. Without examining the large number of authorities which are to the effect as the one I have already quoted, it is clear that the proposition which that authority enunciates is well established. In my opinion, in this case the order of the learned District Judge is so manifestly wrong that it would be in a sense a denial of justice and a fair trial of the plaintiff's action.

5. It appears to me that no kind of evidence could establish the fact that the cutting of growing timber could be properly compensated by money. There is no doubt that the English authorities from which the practice as regards injunction in this country is derived, clearly establish the fact that in a case of waste, such as this is or is alleged to be, although an injunction cannot be stated to be as of right, yet the Court will always exercise its discretion in favour of an applicant for an injunction to restrain such waste. In my view, to allow the order of the learned District Judge to remain would be to deprive the plaintiff of her rights in the suit and to make it infructuous and, therefore, it is, in my opinion, manifestly bad and in that view of the matter,

6. I propose to grant the injunction in terms of the prayer in the petition. I also direct the Munsif to expedite the hearing of the title suit.

7. The application is allowed with costs; hearing-fee two gold mohurs.