
(1877) 02 AHC CK 0004
In the Allahabad High Court

Racha Rai and Another

APPELLANT

Vs

Abdul Rahim

RESPONDENT

Date of Decision : 14-02-1877

Acts Referred:

Citation : (1875) ILR (All) 363

Hon'ble Judges : Robert Stuart, C.J;Pearson, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Robert Stuart, C.J.—I agree with Mr. Justice PEAKSON that although an order on an application for a review of judgment is final, objection may be taken in special appeal against that order, and that, therefore, the present special appeal was competently preferred. I am also of opinion with him that the review of judgment was properly granted in this case, and that the evidence on which it was based was material and essential to the just determination of the suit.

2. In his judgment of the 29th November 1875, the first Subordinate Judge points out the particulars in the way of evidence in regard to which the plaintiffs' case in his opinion was defective, viz., the absence of any sufficient evidence of the arbitration award and of the patwari's deposition; and further, in allusion to the circumstances that the plaintiffs had not adduced any parol testimony, he remarks-- Besides this no documentary evidence, such as "khasra," "khatani," or rent-roll, has been filed on the part of the plaintiffs, from which it could have been shown that the names of the plaintiffs and their ancestors were ever recorded as shareholders in respect of this grove." All this important information, however, was subsequently supplied, and it was considered by the second Subordinate Judge when the application for a review of his predecessor's judgment (in which application, it is to be observed, it was distinctly offered) was before him, and as the new evidence, which it appeared had been filed with some other record, and the first Subordinate Judge had not, therefore, an opportunity of perusing it showed not only good and sufficient reason, but also

evident error and omission, the review was properly and justly granted. This special appeal, therefore, fails and is dismissed with costs.

Pearson, J.

3. Under the provisions of Section 378,* Act VIII of 1859, the order made by a Court to which an application for a review of judgment is preferred, whether for rejecting the application or for granting the review, is final, but I am nevertheless of opinion that objection may be taken in appeal against the decision passed on review on the ground that the review was improperly granted. I proceed, therefore, to consider the pleas in appeal.

4. In his decision of 29th November 1875, the officiating Subordinate Judge observed that "the Munsif, in proof of the plaintiffs right, had relied on a copy of the arbitration award, dated Aghan Badi 5, 1265 Fasli, wherein the share of Adhar Rai's brothers, i.e., the ancestors of the plaintiffs, has been declared. A copy of the award is however, not filed on the record in this case, though it may have been filed with the records of the case formerly decided, but there is no trace of the original award, and the Munsif himself admits that it is not signed by the presiding officer. Then, under these circumstances, it is quite useless to rely on such a paper which is not free from suspicion, and no argument can be adduced in support of its genuineness. The copy of the patwari's deposition also is not filed in this case, and the said copy, without its original, and in absence of the original arbitration award, is of no use." The lower Appellate Court's proceeding of the 15th April last states that "the application for review is filed with three copies, and it is urged briefly that the aforesaid copies were not perused at the time of the disposal of the appeal case, and that they go to establish the averment of the plaintiffs. It appears on reference to the record that really the abovementioned copies were not perused at the time of disposing of the appeal case. The reason for the non-production of the said copies on the first occasion as stated by the petitioners is that the copies in question were filed with the record of some other case, and this appears to be a good reason." The application for review of judgment was therefore allowed, and the result has been the confirmation of the judgment of the Court of First Instance.

5. Referring to the pleas in appeal, I remark that the adduction of newly discovered evidence is not the only ground on which a review of judgment may be allowed. "Any other good or sufficient reason" is permitted by Section 376, and Section 378 allows a review to be granted when "necessary to correct an evident error or omission, or otherwise requisite for the ends of justice." In this case it would seem that some very material documents on which the first Court had relied had been summarily discredited without being inspected by the lower Appellate Court, which, if it did not think proper to call for and inspect the record of the case in which copies of those documents were to be found, might at least have given the plaintiffs permission to file copies of them. The application for review of judgment urged, moreover, that the lower Appellate Court, in its decision of the 29th November, 1875, had erred in declaring the report of the

Commissioner appointed by the Munsif for the purpose of making a local enquiry to be unworthy of reliance, because he was a muharrir of the Munsif's Court, and it is presumable that the lower Appellate Court was influenced by this argument in granting the application. On the whole I see no sufficient reason for holding that the lower Appellate Court exceeded the discretionary power vested in it by the law in granting the review applied for, or that the reasons assigned by it for its final decision are insufficient in law. I would, therefore, dismiss the appeal with costs.

-----Foot Note-----

*[Section 378:--If the Court shall be of opinion that there are not any sufficient grounds for a review, it shall reject the application, but if it shall be of opinion The order of the Court for that the review desired is necessary to correct an evident error or granting or refusing the omission, or is otherwise requisite for the ends of justice, the review is final. Court shall grant thereview, and its order, in either case, whether for rejecting the application or granting the review shall be final. Provided that no review of judgment shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of Proviso. the decree of which a review is solicited.]