

(1963) 05 AHC CK 0004

Allahabad High Court

Case No: Civil Revision No. 102 of 1962

F.G. Davidson

APPELLANT

Vs

Mohanlal Sindhi

RESPONDENT

Date of Decision: May 24, 1963

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 1

Citation: AIR 1964 All 342

Hon'ble Judges: S.C. Manchanda, J

Bench: Single Bench

Advocate: K.M. Deyal, for the Appellant; M.P. Sen, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.C. Manchanda, J.

This is a revision against the order of the Second Additional Munsif, Kanpur dated the 13th October 1961 reviewing the order of his predecessor and recalling the order dated the 29th of July 1961 passed by his" predecessor.

2. The main ground of revision is that the learned Additional Munsif exceeded his jurisdiction inasmuch as he sat on the judgment of his predecessor in appeal and reversed the order purporting to do so by exercising his powers under Order XLVII Rule 1 of the C. F. C.

3. A cursory perusal of the order passed in review shows that the learned Judge ignored the provisions of Order XLVII Rule 1 and decided the matter as if it was an appeal before him. A review under Order XLVII Rule 1 can only lie if one of the grounds mentioned therein is made out. There must be the discovery of new and important matter of evidence which after the exercise of due diligence was not within the knowledge or could not be produced at the time when the order was

made or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, which must be analogous to the first two grounds. In the present case the order shows that there was no error apparent on the face of the record and the Judge was constrained to go elaborately into the evidence in the case.

4. The facts of the case briefly are, that Salig Ram Misra had instituted a suit No. 1481 of 1959 for recovery of arrears of rent on behalf of F. G. Davidson as his special power of attorney agent against Mohanlal and obtained a decree on 18-5-61. On the 30th May 1961, one Bal Govind Kaya and the said judgment-debtor Mohan Lal filed a compromise application for satisfaction of the suit decree. The Munsif, who had passed the decree, rejected the said application on the ground that the suit was filed by Salig Ram Misra and a decree obtained by him whereas the compromise application was filed by Bal Govind Kaya who had no locus standi as the power of attorney in his favour given by the decree holder had been cancelled? After that the Munsif was transferred. A review application was filed before his successor the Second Additional Munsif, who proceeded to examine the evidence on the record in detail in order to ascertain whether the power of attorney given to Bal Govind Kaya by F. C. Davidson, the decree holder had been cancelled as claimed and as such had no right to enter into the said compromise with the judgment debtor. He examined inter alia paper No. 29-B, the alleged deed of revocation dated, the 29th March, 1956, whereby F. G. Davidson had purported to revoke the power of attorney executed in favour of Bal Govind Kaya. The Learned Munsif on scrutinising the evidence came to the conclusion-

"I am of opinion that neither of these powers have been duly proved. Even if the said deed of revocation be presumed to be a genuine one the power of attorney executed by Shri F. G. Davidson in favour of Bal Govind Kaya will not cease to be operative till F. G. Davidson himself gives notice about the revocation to Bal Govind Kaya This letter 68 C(1) dated 20-4-1958 clearly shows that F. G. Davidson never gave any notice to Bal Govind Kaya revoking the power of attorney in question and in this view of the matter it cannot be held that Bal Govind Kaya's power to act as attorney for Sri F. G. Davidson has been duly revoked."

5. It is manifest, that what the learned Munsif did was to sit in appeal on the order of his predecessor and was not reviewing the order. In these circumstances the order of the learned Munsif dated the 13th October, 1961, is clearly without jurisdiction.

6. For the reasons given above the order dated, the 13th October, 1961, is set aside and the original order of the Munsif dated the 29th July, 1961, is restored.

7. The revision is accordingly allowed. No order as to costs.