
(1880) 07 CAL CK 0015

Calcutta High Court

Case No: None

Kurkut Shah

APPELLANT

Vs

Shumsher Ally

RESPONDENT

Date of Decision: July 19, 1880

Acts Referred:

- Mofussil Small Cause Court Act, 1865 - Section 21

Citation: (1881) ILR (Cal) 236

Hon'ble Judges: Richard Garth, C.J; Mitter, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

As Section 21 of Act XI of 1865 has not been repealed or affected by the Civil Procedure Code, 1877, I am of opinion that the provisions of that section are still in force with regard to applications for a new trial, and that they are not directly controlled in their operation by Section 624 of the Civil Procedure Code.

2. That the two procedures (viz., the one for a new trial, and the other for review) are both still in force, has virtually been decided by Mr. Justice JACKSON and Mr. Justice Tottenham in the Small Cause Court Reference, Nos. 69 and 70 of 1879.

3. At the same time, I think it right to add that, having regard to the nature of the question referred to us, in my opinion any Small Cause Court Judge, in dealing with applications for a new trial u/s 21, is bound to observe and respect the manifest intention of Section 624 which is indeed only an enactment by the Legislature of the rule which had been previously laid down by this Court as a guide to the Judges of Subordinate Courts when dealing on review with their predecessors' judgments :- see Ellem v. Basheer (I. L. R. 1 Cal. 184) and Boy Meghraj v. Beejoy Gobind Bural (I. L. R. 1 Cal. 197).

4. It is to my mind manifestly improper for one Judge to review, or grant a new trial of, a case decided by his predecessor, where the alleged error consists in the determination of some question of law or fact upon which the one Judge has only the same materials and the same means of forming a satisfactory conclusion as the other.

5. I think that it would be quite as indecent under such circumstances for one Small Cause Court Judge to reverse a decision of his predecessor, as it would be for one Division Bench of a High Court, consisting of two Judges, to reverse the decision of another Division Bench of the same Court, also consisting of two Judges.

6. Our attention was directed during the argument to a case decided by the Privy Council in the year 1876-*Reasut Hossein v. Hadjee Abdoollah* I. L. R. 2 Cal. 131; s.c. L. R. 3 I. A. 221; but the point now under consideration was not discussed or even alluded to in that case.

7. The question there arose was, whether one District Judge had jurisdiction to review the decision of his predecessor for any cause other than some positive and apparent error of law, or the discovery of new evidence; and their Lordships state in their judgment that, looking to the extreme generality of the terms used in Sections 376 to 378 of Act VIII of 1859, they were not prepared to say that one Judge had absolutely no jurisdiction to review the decision of his predecessor, whenever the parties failed to show that there was some positive error of law in the former judgment, or new evidence to be brought forward.

8. That case was decided upon the language of the CPC of 1859, which differs in some respects from that of the new Code, and in which, notably, there was no provision similar to that in Section 624.

9. This section seems to me to declare very plainly what the views of the Legislature are upon the point now under discussion.

11. It is very probable that, at the time when these review sections of the CPC were passed, the operation of Section 21 of the Act of 1865 did not receive sufficient attention.

12. As Small Cause Court cases in this country are tried, both as regards law and fact, by the Judge alone, it is difficult to conceive any reasons which would justify anew trial which would not also afford good grounds for a review; and, if so, the principle, if not the actual provisions, of Section 624 ought to be applicable to new trials as well as to reviews.

13. Although, therefore in this instance, the Small Cause Court Judge has jurisdiction, under the circumstances, to entertain the application for a new trial, I think that, in the exercise of that jurisdiction, he should be guided by the considerations to which I have referred.

Mitter, J.

14. I am also of opinion that the present Officiating Judge of the Court of Small Causes at Sealdah has jurisdiction to entertain an application for a new trial. As to the grounds upon which he should grant a new trial in the case out of which this reference has arisen, I express no opinion, as that is not one of the questions referred to us.