ALLAHABAD HIGH COURT

Buddhoo Lal

Vs.

Mewa Ram

(Rafique, Piggott, Walsh, Ryves and Gokul Prasad, JJ.)

26.01.1921

JUDGMENT

Rafique, J.

1. The Reference to the Fall Bench raises the question of the re visional powers of this Court under Section 115 of the Civil Procedure Code. It appears that the plaintiff resides and carries on business as a sloth merchant in Etawah, while the defendants are commission agents who live and carry on business at Cawnpore. A dispute arose between them in connection with the orders given by the plaintiff for the purchase of cloth. The plaintiff thereupon instituted a suit in the Court of the Munsif of Etawah for the recovery of a Certain amount by way of damages. One of the pleas taken in defence was that the Court at Etawah had no jurisdiction to entertain the suit which should have been filed in tin Civil Court at Cawnpore. The learned Munsif, instead of trying all the issues raised in the case, proceeded to receive evidence and hear arguments on the question of jurisdiction only, He disposed of the issue of jurisdiction be his order dated die 27th of August 1919 against the defendants. A formal order was drawn up later on, embodying the decision of the issue. The defendants preferred an application in revision from the raid order, seeking the interference of this Court under Section 115 of the Code of Civil Procedure . The application same up for hearing before a Bench of two learned Judges of this Court, before whom a preliminary objection was taken on behalf of the plaintiff that the order complained of, being an interlocutory order, could not form a fit subject of revision by this Court. In view of conflict of opinion net only among the different High Courts but in this Court also, the learned Judges have referred the question to a larger Bench. The referring order raises the general question of the competency of this Court to interfere with interlocutory orders, though the arguments have naturally been mostly directed to the particular matter in issue between the parties, namely, whether the defendants, whose objection to the jurisdiction of the learned Mursif has been rejested, can invoke the aid of this Court under Section 115 of the Civil Procedure Court, The other matter upon which the parties are at variance, Lamely, whet Let the decision of the Munsif on the plea of jurisdiction is justified by the materials on the record, has not been argusd, nor, has it been referred to us therefore, propose to confine myself to the consideration of the question, whether the disposal of the plea of jurisdiction by a Court subordinate to this Court against the party that has taken the objection an be revised by this Court under Section 115 of the Code of Civil Procedure , and I propose to deal with the question vary shortly. It in contended on behalf of the opposite party, the plaintiff in the suit, that the present application is not

maintainable because, first, no case has been decided within the meaning of Section 115 of the Code of Civil Procedure and, secondly, another remedy is open to the applicant, namely, in case of & decree against him he can at the time of appeal question the jurisdiction of the Munsif. It in argued that no case, but a part of the case, has been disposed of. The case is really still pending in the Court of the Musnif. The defendants will have time enough to challenge the jurisdiction of the Munsif if a decree id pasted against there and they choose to appeal from it. For the applicants the argument in that a decree is not the same thing as a suit. The word "case" has a much larger significance. The words "case which has been decided" are large enough to include any particular question in issue between the parties to a suit, with question has been disposed of by a judicial order. As to another remedy being open to the applicants, that has nothing to do with the maintainability of the present application. In Section 115 one of the erudition's required is that no appeal lies from the order complained of. The section does not mean to say that no remedy pt any time is open to the aggrieved party. Moreover, it would be small correlation to the applicants to succeed on the plea of jurisdiction on appeal from the decree after undergoing a great deal, of trouble and expense and have the suit tried by the Cawnpore Courts over again. A large number of case have been sited by fash party in support of its view. I do not propose to mention or discuss them. The divergent views are based upon the meanings of the (sic) "case" and "decided," The case is may be summarised by giving the principles upon which the two consisting opinion are lased. Some of the learned Judges have help what the word "case" is large enough to include an order that deals with an issue or question raised between the parties, and the word "decided" any adjudication or judicial pronouncement on such a question or issue, irrespective of the fast. whether such pronouncement determines the trial of the suit in the Court making such pronouncement or not, a Contrary view is taken by some other learned Judges. I take the former view and bare already been a party to a Case where it was given effect to vide *Bharga a & Co. v. Jagem bath Bhagwan Dass*[1] No definition of a Case "or" decided is given in the Civil Procedure Code. One of the legal imports of the word "case" according to Wharton is "trial." I also find that a distinguished Judge of this Court has defined the word "case" in *Chattarpal Singh v. Raja Ram*[2] In the sale the question arose whether the rejection of an application to sue in for ma pauper is could be revised by this Court. Daring the con use of the arguments the meaning of the word "case" was also agitated, Mr. Justice Mahmood defined the word thus. The word case as used in Section 622 of the Code of Civil Procedure , is nowhere defined; but adopting the general rule of construing: Statutes 1 hold that the word should be understood in its most broadest and most ordinary sense, unites there were specific reasons for narrowing its meaning. I confess I am unaware of any such reason, and limiting the arguments to orders under Section 407 of the Civil Procedure Code, I should say as a general proposition that that which might constitute the subject of an appeal would necessarily be a Case." I adopt the definition of the word case" given by Mr. Justice Mahmood. It is true that he guarded himself by confining it to cases under Section 407 of the old Code, i.e., to cases of suitors who applied for leave to sue in form a pauper is, but I think that it is the best working definition and should be applied to other cases also. It cannot be and is not denied that the order of the learned Munsif complained of might constitute the subject of an appeal. The effect of the order, there fore, is a Case decided. The objection that another remedy is open to the applicants if a decree is passed against them, is not sustain able upon the

[1]5 I.C. 331 : 41 A. 602 : 17 A.L.J. 718 : 1 U.P.L.R. 120

[2](1885) A.W.N. 156 : 4 I.C. 864 : 7 A. 661

language of Section 115 of the Civil Procedure Code, which requires that no appeal lies from the

decision objected to. I would, therefore hold that the present application is entertain able by this Court.

Piggott, J.

2. The plaintiff in this case keeps a Cloth shop at Etawah; the defendants are dealers in sloth carrying on business at Cawnpore. The plaintiff instituted a suit in the Court of the Munsif of Etawab, claiming a sum of money as damages on account of an alleged bench of contract. The defendants filed a written statement, in which they raised a number of pleas. One of these was to the effect that the Court of the Munsif of Etawah had no jurisdiction to entertain the suit, The plaintiff, on the other band, alleged that his cause of action had arisen, in part at any rate, within the local omits of that Court so that Clause (c) of Section 20 of the Code of Civil Procedure (Act V of 1906) gave him the option of resorting to this Tribunal instead of to any Court at Cawnpore, within the local limits of whose jurisdiction the defendants reside or carry on business. The issue thus raised was stated by the Munsif of Etawah in the following words: "Is this suit cognizable by this or the Civil Courts of Cawnpore?" This was a mixed issue of fast and of law, for the Court required both oral and documentary evidence to enable it to pronounce judgment upon it. The position, therefore, was not precisely that contemplated by Order 14, Rule 2 of the Code of Civil Procedure; but representations must have been made to the Court that it would be convenient to the parties if this issue were tried out first, before the parties were sailed upon to produce evidence on any of the other issues raised. The learned Munsif fell in with this view and fixed a date for the trial of this issue only. He took the evidence tendered by the parties and recorded his finding, with the reasons therefor," as required by Order 20, Rule 5 of the Civil Procedure Code, The decision is to the effect that the suit is cognizable by this Court," and the order passed thereupon is that the suit be fixed for hearing on some date convenient to the parties." The learned Mansif went further ant drew up a "formal order," a sort of preliminary decree, beginning with the words: "This case coming up for hearing," land ending with: It was ordered that the suit was cognisable by this Court." It seems beyond question that the trial Court intended, presumably with the consent of the parties, to detach this question of jurisdiction from the remaining questions raised by the pleadings and to dispose of it as a separate matter preliminary to the trial of the "suit" proper. It seems with noticing at once that if the decision of the learned Munsif upon this issue had been in the opposite sense, the correct legal consequence would not have been a decree dismissing the suit, bat an order that the plaint "be returned to be presented to the Court in which the suit should have been instituted," vide Order 7, Rule 10 of the Civil Procedure Code. From such an order an appeal lies under Order 43, Rule (I)(a), read with Section 184 of the said Code; and in the pre wit case the appeal would have lain to the Court of the District Jugs. It is, therefore, clear that if tab plaintiff in this suit had felt dissatisfied with the derision of the trial Court upon the question of jurisdiction he could have claimed as of right to have that decision reviewed by a higher Tribunal, bat that this Trigonal would have been the Court of the District Judge, any further right of appeal being expressly excluded by Section 104(2) of the Civil Procedure Code.

3. It so happens that it is the defendants who are dissatisfied with he decision of the Munsif of Etawah upon the question of jurisdiction; they have invoked the revisional jurisdiction of this Court as defined and limited by Section 115 of the Civil Procedure Code. They ask this Court to re-consider the materials upon which the learned Munsif arrived at the conclusion that the plaintiff had established a Cause of action arising, in part at any rate, within the local limits of the

jurisdiction of his Court. On behalf of the plaintiff the point has been taken, by way of a preliminary objection, that it is not open to this Court to examine the record, because it is not the record of any case which has been decided," within the meaning of that expression as used in Section 15 of the Code of Civil Procedure , Subsidiary to this main contention the argument has also been advanced that this Court ought not to interfere in revision because the defendants, in the event of the suit resulting in a decree in their favour, will not have been injured by the decision on the question of jurisdiction, while, in the event of a decree bring passed against them, the law gives them a right of appeal against the decree and in such appeal it would be open to them to take the paint that the Court of the Munsif of Etawah had no jurisdiction to pass any such decree.

4. I am quits satisfied, although something was said to the contrary in the course of arguments before up, that this plea would be open to the appellants in the case suggested. Where an appeal is given by law against the decree of a trial Court, it is always open to the appellant to challenge the correctness of the finding of the first Court upon any material issue directly arising out of the pleadings. It follows that it would be within the discretion of this Court to refuse to entertain the present application on the mere ground that another remedy is open to the defendants. This, however, is not the point which has been referred to the Ball Bench We are asked to determine whether this application in revision is entertainable at all.

5. This question must be decided primarily with reference to the precise words used in Section 115 of the Code of Civil Procedure . That section empowers the High Court to "call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto." These words lay down conditions precedent, which must be satisfied before the revisional jurisdiction of the High Court comes into play: the record laid before that Court for examination must be one of a Case which has been decided, and in which no appeal lies to the said High Court. In the former Code of Civil Procedure (Act XIV of 1882) the corresponding section opened as follows: The High Court may call for the record of any case in which no appeal lies to the High Court, if the Court by which the case was decided appears, etc." Here the fact that the "case" in which the revisional jurisdiction of the High Court is invoked must have been "decided" before the record is called for, was left to he inferred: it was not expressly so laid down. It seems to me that the Legislature, in redrafting this provision in the present Code (Act V of 1908), has almost gone out of its way to settle a point about which there had been some controversy; it is the more incumbent upon us to give full effect to the words used, according to their plain meaning.

6. The words "case" and "suit" are both used in various parts of the Code of Civil Procedure and neither of them is defined. We know that a "suit" commences with the presentation of a "plaint" (see Section 26 of the Code) and terminates in a "decree," according to the definition in Section 2, Clause (2). A "case" need not do either of these things, and generally speaking, this word seems to be used in those rules which are intended to apply to other proceedings as well as "suits." It need scarcely be pointed out that there are many such proceedings, as for instance those under the Guardkns and Wards Act and under the Provincial Insolvency Act. The word "case" is, therefore, the more comprehensive expression of the two; but while in Order 12, Rule 2, it is used as if practically synonymous with "suit," I am confident tint no instance can be quoted of its use where it would not at least include a "suit." If this view is correct, it follows that, whereas all "cases" are not "suits," every "suit" is at least a "case." From this I would go on to

conclude that, where the "case" in which the revisional jurisdiction of the High Court is invoked happens to be also a "suit," then this suit is itself the "case", referred to in Section 115 of the Civil Procedure Code, which requires to be decided before the record is called for. To put the point in another way: holding that the word "case" in the Code of Civil Procedure always includes a "suit," I read the relevant portion of Section 115 just as if it ran: "May call for the record of any suit or other description of case which has been decided," The record of a suit, therefore, should not be called for under this section until the suit has been decided.

7. This would be my answer to the question under reference if I based that answer solely on the interpretation of the words of Section 115 of the Civil Procedure Code as they stand. If I refer to any further considerations, it is only because they seem to me to confirm this view, and not because they have determined it. These further considerations are in substance three.

8. Firstly, in drafting the present Code of 'Civil Procedure, Act V of 1908, the Legislature seems to me to have dealt carefully and systematically with the question how far a party to a suit, finding himself aggrieved by any order passed by the trial Court prior to the delivery of the final judgment, should he permitted to carry the matter before a higher Tribunal without waiting for the decision of the suit. I would lay stress on the fast that, after Section 104 of the Code has provided a right of appeal against a number of orders dealing with arbitration's or with the exercise of the punitive jurisdiction of the Courts, the last clause of this section relegates to the schedule the list of other orders against which a right of appeal in given. This leaves it open to the various High Courts to make additions to this list, without invoking the interference of the Legislature, if experience should suggest that any probable case of real hardship has been left unprovided for. The list of appealable orders given in Order 43, Rules 1 and 2, has been carefully drawn up, so much so that in a number of instances an appeal is given when the Court has decided a particular question in one sense, but not it the decision is the other way. My own opinion is that the list is an adequate one, and that the intention of the Legislature will best be carried out by refraining from interference with orders passed by subordinate Courts in the course of the trial of suits while giving full effect to the provisions of Section 105 of the Civil Procedure Code by allowing the unsuccessful party to challenge in appeal from the final decree any order which has affected the decision of the case, that is to say, any order passed by the trial Court but for which the decision might have been other than it was.

9. Secondly, I take a point which has a direct bearing on the particular question before us. The Legislature has definitely considered the possibility that some particular issue raised by the pleadings in a suit may be tried out and determined as a preliminary to the trial of the remaining issues. Indeed, under Order 14, Rule 2, of the Code, the Court is bound to try first any issue or issues of law which arise upon the pleadings and are such that their determination may perhaps suffice to dispose of the "case, or any part thereof," Yet no right of appeal is provided against an order which determines one or more of such preliminary issues. I think the Legislature was of opinion that the balance of convenience was on the whole in favour of leaving such findings to be contested on appeal from the final decree. I think it intended to exclude this Court's interference in revision by the use of the words case which has been decided" in Section 115 of the Civil Procedure Code. If this Court is of opinion that the balance of convenience is the other way, it can lay down rules prescribing a proper form of procedure and a right of appeal from all orders which determine preliminary issues in a suit. This would at any rate have the advantage of putting a preliminary issue on a point of jurisdiction on the same footing as a similar issue on a

question (say) of limitation, and of sending the case on appeal to the Court to which appeals from the trial Court ordinarily lie.

10. This last remark leads up to the third point which I desire to make. I think that by interfering in revision in this matter we should be ousting the jurisdiction of the proper Court of Appeal to which the Legislature has entrusted the duty of reviewing the decision of the Munsif's Court upon this particular issue have pointed out that, if his decision had been the other way, the result would have been an order appealable to the Court of the District Judge. I think that the decision actually arrived at was equally intended to be reserved for re-consideration by the same Court, by way of appeal from the final decree. If the learned Munsif had Been fit to do so, he would have been within his jurisdiction had he simply informed the parties that, for reasons to be recorded hereafter in his judgment on the suit, he proposed to decide the question of jurisdiction in favour of the plaintiff and would, therefore, proceed with the trial of the remaining issues. The only order on the record would then have been an order fixing a date for this purpose. I do not see how this Court could be asked to treat such an order as one by whish a "case" between the parties had been "decided." If I am right in taking this view, then the present application in revision can be supported only on the ground that the Munsif elected to deal with the preliminary issue in a particular way; that is to say, it was in his discretion either to confine the defendants to their remedy by way of appeal from the final decree or, while leaving them this remedy still open, to offer them the option of coming up to this Court in revision. It may be an arguable point whether such a state of things would be desirable, but my point is that it was not contemplated by the Legislature, and was intended to be excluded by the use of the words "case whish has bean decided in the section which we are considering.

11. In what I have said above I have, as I think, incidentally disposed of an argument on which a good deal of stress seemed to be laid in support of this application. If I rightly understood the point, it was represented to us, more particularly with reference to the case-law on the subject, that there must be something inherently unsound, or even absurd, about the proposition that a Court can, by determining a particular question in one sense, decide a Case between contending parties, whereas a finding in the opposite sense would not be held to have decided the case. This was not the opinion of the learned Judges of this Court who dealt with an application in revision in the reported case of *Mohammad Ayub v. Mohammad Mahmood*[3] and I cannot myself see anything unsound about the proposition, stated in general terms. Suppose, for instance, that the pleadings, in a suit raise the question whether or not the claim, on the facts stated in the plaint itself, is barred

[3]6 I.C. 831 : 32 A. 623 : 7 A.L.J. 741

by limitation. A finding that it is so barred would obviously decide the entire case; it would result in a decree dismissing the suit. A finding in the opposite sense would certainly not determine the suit; and to hold that it had nevertheless decided a "case" between the parties seems to me contrary to the letter and spirit of Order 14, Rule 2 of the Civil Procedure Code.

12. This leads me on to the consideration of the case law on the subject, about which I desire to say little. The view which I have taken is certainly not without support from authority. In *Chattar Singh v. Lekhra Singh*[4] it was laid down that, even under the former Code of Civil Procedure, "it was not the intention to allow of revision of interlocutory proceedings in the course of a suit which do net determine it." I would refer also to a much more recent case, that of *Bai Rami v. Jaga Dullabh*[5] where the learned Judges lay it down broadly that "We have, therefore, no power

to call for the record of any case which is under trial by a Court subordinate to the High Court."

13. It is said that there is a Considerable volume of authority on the other side, and numerous cases were cited. In a Considerable number of these cases the High Court was dealing with the record of a Case which had beyond question been decided, having been finally disposed of and struck oil the pending file of the Subordinate Court concerned. An instance in point is *Balakrishna Udayar v Vasudeva Aiyar*[6] Other cases were referred to in which the High Court did interfere in revision, but without discussing the question whether the record before it was or was not that of a Case which had been decided. It can only be said that in these instances this particular point was either assumed or conceded in argument. An instance is to as found in a reported decision to which I was myself a party: *Janki Prasad v. Parmeshwar Din Pandey*[7] It was there taken for granted that an order allowing an application to set aside an ex parte decree was one by which a Case had been decided. Re-considering this point in the light of the arguments which have been addressed to us at the hearing of this present application, I find it to be a very argueble one. If it ever arises before me again, I shall ask to have it fully argued before I commit myself to a reasoned decision; but at any rate it is very different from the point now before us.

13A. On this particular point there is one reported decision of this Court directly in favour of the applicants, that of *Bhargava of Co. v. Jagan Nath Bhagwan Das*[8] I understand that this present application has been referred to a Full Bench, largely in order that this decision may be further considered and compared with other reported decisions in which this Court has refused to interfere on the ground that the record before it was not that of a Case which had been decided. Such cases are fairly numerous: I would refer to my own decision in *Dhun Dei Kunwar v. Chotu Lal*[9] to *Sultanat Jahan Begam v. Sundar Lal*[10] and to the cases to be found reported as *Mul Chand v. Juggi Lal*[11] *Moti Lal v. Gangadhar*[12] and *Jwala Prasad v. East Indian Railway Co*[13].

[4] 5 A. 293 : 1883 A.W.N. 39 : 3 I.C. 281
[5] 57 I.C. 556 : 44 B. 619 : 22 Bom. 801
[6] 40 I. C. 650 : 40 M. 793 : 15 L.J. 645 : 2 P.L.W. 101 : 33 M.L.J. 69 : 26 C.L.J. 143 :19 Bom. 715 : (1917) M.W.N. 628 : 6 L.W. 501 : 22 C.W.N. 50 : 11 B.L.T. 48 : 44 I.A. 261
[7] 29 I.C. 975 : 13 A.L.J. 482.
[8] 5 I.C. 331 : 41 A. 602 : 17 A.L.J. 718 : 1 U.P.L.R. (A.) 120
[9] 38 I.C. 975 : 13 A.L.J. 482
[10] 58 Ind. Cas. 90 : 18 A.L.J. 431 : 42 A. 409
[11] 25 I.C. 176 : 13 A.L.J. 460
[12] 29 I.C. 176 : 13 A.L.J. 435
[13] 46 I.C. 99 : 16 A.L.J. 535.

14. It must be conceded on the other hand that the Calcutta High Court has held that the word "case" in Section 115 of the Civil Procedure Code (Act V of 1809), or in the corresponding section of the Code of 1882, is wide enough to include the decision of a particulate question arising in the course of the trial of a suit, as distinguished from the suit itself, I do not think we were referred to any case in which this principle was specifically extended by that Court to include the determination of a preliminary issue arising out of the pleadings, or that this particular point has ever been considered by the learned Judges of the Calcutta High Court with reference to the wording of Order 14, Rule 2 of Act V of 1908, or the general scope and intention of that Statute in the matter of appeals from orders. The learned Judges who decided the case of *Bhargava of Co. v. Jagan Nath Bhagwan Dat*[14] are members of this Bench and in a position to say whether their opinions have bean modified by the arguments to which we have listened; with all respect for their authority, I do not think that their decision is supported by anything in the Privy Council case of *Balakrishna Udayar v. Vasudeva Aiyar*[15] which it purports to follow. The

weight of authority, in this Court at any rate, seems to me against it, and I have given my reasons for taking a different view of the meaning and effect of the determining words in Section 115 of the Code of Civil Procedure .

15. In my opinion, therefore, the order against which this application in revision has been filed is merely a finding by the trial Court on one out of several issues arising in a suit which is still pending. I would dismiss the application on the ground that the record before us is that of a pending suit and not the record of any case which has been decided.

Walsh, J.

16. A preliminary objection is raised to the competency of the High Court to entertain this application in revision.

17. In my opinion two conditions precedent, and two only, have to be established before the High Court can entertain an application in revision. The matter complained of must be a "case which has been decided by a Court subordinate" and it must be a Case "in which no appeal lies to the High Court,"

18. In the case the Munsif has decided the question of his own jurisdiction in a hearing separate and distinct from the merits, as a preliminary question. He is taken evidence the has delivered a judgment deciding the point and he has drawn up an order. I think this is a "cast" is distinct from a snit. It certainly is so in the ordinary signification of the term. The fact that the hearing was an interlocutory one or a preliminary one, does not make it any the less a Case. Interlocutory matters in England, where an appeal is allowed, some comes even to the House of Lords, are certainly cases." This point was decided in India by the Calcutta High Court in 1087, *Dhapi v. Ram Pershad*[16] and has never since been questioned there. Many instances are to he found in the reports of similar cases, of interference by our own High Court, though not in the precise

[14]5 I.C. 331 : 41 A. 602 : 17 A.L.J. 718 : 1 U.P.L.R. 120

[15]40 I.C. 650 : 40 M. 793 : 15 L.J. 645 : 2 P.L.W. 101 : 33 M.L.J. 69 : 26 C.L.J. 143 : 19 Bom. 715 : (1917) M.W.N. 628 : 6 L.W. 501 : 22 C.W.N. 50 : 11 Bur. L.T. 48 : 44 I.A. 261

[16]14 C. 768 : 12 I.J. 97 : 7 I.C. 509

form of the case now before us. I cannot add anything to what I said in my judgment, in *Bhargava and Co. v. Jagan Nath Bhagwan Dat*[17]

19. No appeal lies from the order now before us. The fact that an appeal may hereafter be brought from the final decree and that under Section 105 of the Civil Procedure Code the order may be made the subject of an objection in such appeal so far as it affects the merits, does not, in my opinion, make the case one in which an appeal lies to the High Court now, when the application in revision is made.

20. On these grounds I think the preliminary objection fails. To hold otherwise is to my mind to do violence to the language of the section, and to ignore the interpretation pub upon it by the Privy Council. Having regard also to the necessity of this Court Exercising control over the lower Courts especially on questions of jurisdiction in interlocutory as well as other matters, I should record it as a serious blot on oar procedure if the preliminary objections were to prevail.

21. Whether the case is one which on the merits, and on the question of jurisdiction, calls for the interference of the High Court is an entirely different question, which is not before us.

22. The instances in which the High Courts in India have interfered in cognate matters, and the Judges who have done so in the as well as in other High Courts, are so numerous that it would be wearisome to recite then. It is idle to deny that there are pronounced and irreconcilable differences of principle in the practice followed by different Judges in the Allahabad High Court. I regard the state of authorities on this question in this High Court as a lamentable one. The decisions appear to hold that an application for leave to sue in for ma pauperis is "sate decided" within the meaning of this section if it is decided in the negative, but not if it is decided in the affirmative, and also that a decision of a Munsif holding that he has no jurisdiction in a suit for possession valued at ₹ 49/- is a "case decided" within the meaning of this season, but a decision that he has jurisdiction in a suit for possession valued at ₹ 1,00,000/- is not. I am unable to subscribe to these unsubstantial and embarrassing distinctions.

Ryves, J.

23. The only question which I propose to answer in this case is whether the decision of a single issue by a subordinate Court, in a suit which is still pending in that Court, is a "case decided... from which no appeal lies" to this Court within the meaning of Section 115 of the Civil Procedure Code, so as to give us jurisdiction to call for the record, and pass orders under that section.

24. My answer is confined strictly to the precise point we have to decide. The referring order, I think, is perhaps framed too nicely, though I was myself chiefly responsible for its wording.

25. The case was originally argued at length before my brother Gokul Prasad and myself

[17] 5 Ind. Cas. 331 : 41 A. 602 : 17 A.L.J. 718 : 1 U.P.L.R. (A.) 120

and we referred it to a larger Bansh. It then came before ourselves and our brother Walsh, it was then referred to a Bench of five Judges and it has been again fully argued.

27. I have had the advantage of reading my brother Piggott's judgment and I propose to say very little on my own behalf.

28. However expedient or desirable it might be for this Court to be able to interfere in a matter of this kind, I feel our jurisdiction to do 30 must be determined by the language of Section 115. This Court has framed no rules under Section 122, so we are thrown back on the section, In my opinion it is impossible to hold either that the words aged, which I have quoted above, can be interpreted to give us jurisdiction or that the Legislature ever meant to give us such jurisdiction, I agree with the conclusions of Piggott and Gokul Prasad, JJ., and generally with the reasons given by my brother Piggott.

29. There are only two reported cases exactly in point. One by A. Rauof, J., sitting alone, who held this Court could not interfere, *Makhan Lal v. Chunni Lal*[18] and the case of *Bhargava and*

Co. v. Jagannath Bhagwan Das[19] decided by Rafique and Walsh, JJ,, who took the opposite view.

30. I think Mr. Justice A. Raoof was right. a Case decided by myself reported as *Behari Lal v. Paldeo Narain*[20] has been relied on as supporting a Contrary view to what I have above expressed. I still maintain my view in that case, but it seems to me to be wholly irrelevant here. There is nothing in common between that case and this.

31. I cannot see that our decision now will prevent every so called "interlocutory order" from being questioned except on appeal after the final decree in the suit.
Gokul Prasad, J. - 32. I entirely concur in what my learned brother Piggott has said and have nothing to add.

FINAL JUDGMENT.

1. (Ryves and Gokul Prasad, JJ., dated April 11, 1921). Having regard to the decision of the Full Bench on the point of law referred this revision must fall. We, therefore, dismiss it with costs including in this Court-fees on the higher scale.

[18] 47 I. C. 610 : 16 A.L.J 777 : 41 A. 42
[19] 5 I.C. 331 : 41 A. 602 : 17 A.L.J. 718 : 1 U.P.L.R. 120
[20] 48 I.C. 14 : 40 A. 674 : 16 A.L.J. 717