

BOMBAY HIGH COURT

Waghela Raisangji Shivsangji

Vs

Shaik Masludin

(Birdwood and Parsons, JJ.)

25.06.1888

JUDGMENT

Birdwood, J.

1. The opponents, after obtaining in the High Court a decree against the applicant for a sum of money to be paid out of the rents and profits of the applicant's talukdari estate for certain years prior to their suit, brought a second suit in 1883 against the applicant to recover on the same cause of action a further sum of money out of the rents and profits of the same estate for certain subsequent years. This second suit was not contested; and the District Judge passed a decree in favour of the opponents in April, 1883, solely on the strength of the decree of the High Court in the first suit. The opponents took out execution; and, to prevent the sale of his lands, the applicant deposited in Court the sum of Rs. 14,877-7-3. He asked, however, that the money should be held in deposit pending the result of an appeal he had presented to Her Majesty in Council against the decree of the High Court in the first suit. The District Judge appears to have granted this application; for, after receiving the money in deposit, he made an order staying further proceedings in execution. The Privy Council reversed the decree of the High Court in March 1887 I.L.R. 11 Bom. 551. The applicant then applied to the District Judge for the refund of the money he had deposited in Court. The District Judge was of opinion that the applicant's proper remedy was by an application for review of the District Court's decision of April, 1888. The applicant accordingly presented an application for review; but the District Judge, who was not the Judge who had decided the case, rejected the application, on the ground that he had no jurisdiction to entertain it under the provisions of Section 624 of the Code of Civil Procedure. In so ruling, we think that he was wrong; for the decision of the Privy Council, reversing the decree of the High Court in the first suit and ruling that the opponents had no right to sue, having been passed subsequently to the decree in the suit which depended on the reversed decree of the High Court, was, in our opinion, "new and important matter" within the meaning of Sections 623 and 624 of the Code. It was new matter, for it was not in existence in April 1883, and it was certainly

most important matter in the litigation between the parties. It, therefore, justified the application for review made to the successor of the Judge who delivered the judgment sought to be reviewed. We are supported in this opinion by the decision of the Calcutta High Court in *Jonmenjoy Mullick v. Dassmoney Dasse* I.L.R. 8 Calc. 700. We, therefore, reverse the order of the District Judge, and direct that he entertain the application for review made to him under Section 624 of the Code, and dispose of it according to law. Costs of this application to be costs in the cause.