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Magistrate for taking action according to law under section 514 will, therefore, stand set aside.

We generally do not interfere in the matter of sentence, but in this case we find that the Magistrate has held that the appellant's plea that he was ignorant of the provisions of the Assam Food Grains Control Order, 1947, was a genuine one. Having regard to this circumstance and the fact that from a fine of Rs. 50 to 6 months' rigorous imprisonment and a fine of Rs. 1,000 is a big jump, we think it is appropriate that the sentence of imprisonment imposed by the High Court should be set aside and we order accordingly. The fine of Rs. 1,000 will stand.

Sentence reduced.

Agent for the appellant: *Rajinder Narain.*

Agent for the respondent: *Naunit Lal.*

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RADHA KISSEN CHAMRIA AND OTHERS

v.

KESHARDEO CHAMRIA

[MEHR CHAND MAHAJAN, DAS, VIVIAN BOSE and GHULAM HASAN JJ.]

Civil Procedure Code (Act V of 1908), ss. 47, 115, 151—Execution proceedings—Dismissal of adjournment petition—Dismissal of execution case also by same order without asking pleader what he has to say—Restoration of case under inherent powers—Appeal and revision petition to High Court from order of restoration—Maintainability of appeal—Interference by High Court in revision—Legality—Revisional powers of High Court—Appeal from orders made under inherent powers.

A Subordinate Judge dismissed an application by a decree-holder for adjournment of an execution case and by the same order dismissed the execution case itself without informing the decree-holder's pleader that the application for adjournment had been dismissed and asking him whether he had to make any submission in

the matter of the execution case, and on an application for restoration of the execution case setting aside the order of dismissal, the Subordinate Judge, finding that he had committed an error which had resulted in denial of justice restored the execution case in the exercise of the inherent powers of the court under s. 151, Civil Procedure Code. The judgment-debtor preferred an appeal and an application for revision to the High Court against this order. The High Court held that the appeal was not maintainable but set aside the order of the Subordinate Judge in the exercise of its revisional powers and remanded the case to the Subordinate Judge for fresh disposal after considering whether it would have been possible for the decree-holder to take any further steps in connection with the execution application after the dismissal of the application for adjournment:

Held, (i) that the order of the Subordinate Judge dismissing the execution case without giving an opportunity to the decree holder's pleader to state what he had to say on the case itself was bad and was rightly set aside by the court on its own initiative in exercise of its inherent powers.

(ii) The High Court had no jurisdiction in the exercise of its appellate powers to reverse the order of restoration as that order by itself did not amount to a final determination of any question relating to execution, discharge or satisfaction of a decree within the meaning of s. 47, Criminal Procedure Code, and an order made under s. 151, Criminal Procedure Code, simpliciter is not an appealable order.

Akshia Pillai v. *Govindarajulu Chetty* (A.I.R. 1924 Mad. 778), *Govinda Padayachi* v. *Velu Murugiah Chettiar* (A.I.R. 1933 Mad. 399) and *Noor Mohammad* v. *Sulaiman Khan* (A.I.R. 1943 Oudh 35) distinguished.

(iii) As the order of the Subordinate Judge was one that he had jurisdiction to make, and as he had, in making that order, neither acted in excess of his jurisdiction or with material irregularity nor committed any breach of procedure, the High Court acted in excess of its revisional jurisdiction under s. 115, Civil Procedure Code, and the order of remand and all proceedings taken subsequent to that order were illegal.

Section 115, Civil Procedure Code, applies to matters of jurisdiction alone, the irregular exercise or non-exercise of it or the illegal assumption of it, and if a subordinate court had jurisdiction to make the order it has made and has not acted in breach of any provision of law or committed any error of procedure which is material and may have affected the ultimate decision, the High Court has no power to interfere, however profoundly it may differ from the conclusions of that court on questions of fact or law.

Rajah Amir Hassan Khan v. *Sheo Baksh Singh* (1883-83) 11 I.A. 237, *Bala Krishna Udayar* v. *Vasudeva Aiyar* (1917) 44 I.A. 261, *Venkatagiri Ayyangar* v. *Hindu Religious Endowments Board*

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(1949) 76 I.A. 67, *Joy Chand Lal Babu* v. *Kamalaksha Chowdhury* (1949) 76 I.A.131 and *Narayan Sonaji* v. *Sheshrao Vithoba* (I.L.R. [1948] Nag. 16) referred to.

Mohunt Bhagwan Ramanuj Das v. *Khettar Moni Dassi* (1905) C.W.N. 617 and *Gulab Chand Bargur* v. *Kabiruddin Ahmed* (1931) 58 Cal. 111, dissented from.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 12 and 13 of 1951.

Appeals from the Judgment and Decree dated the 17th/21st February, 1947, of the High Court of Judicature at Calcutta (Mukherjea and Biswas JJ.) in Appeal from Original Order No. 62 of 1946 with cross-objection and Civil Revision Case No. 657 of 1946 arising out of Judgment and Order dated the 13th March, 1946, of the Court of the Subordinate Judge, Howrah, in Title Execution Case No. 68 of 1936.

M. C. Setalvad (Attorney-General for India) and *Purushottam Chatterjee* (*S. N. Mukherjee*, with them) for the appellant in Civil Appeal No. 12 of 1951 and respondent in Civil Appeal No. 13 of 1951.

C. K. Daphtary (Solicitor-General for India) and *N. C. Chatterjee* (*C. N. Laik* and *A. C. Mukherjea*, with them) for the respondents in Civil Appeal No. 12 of 1951 and appellants in Civil Appeal No. 13 of 1951.

1952. October 30. The judgment of the Court was delivered by

MAHAJAN J.—These are two cross-appeals from the decision of the High Court at Calcutta in its appellate jurisdiction dated 17th February, 1947, modifying the order of the Subordinate Judge of Howrah in Title Execution Case No. 68 of 1936.

The litigation culminating in these appeals commenced about thirty years ago. In the year 1923, one Durga Prasad Chamria instituted a suit against the respondents, Radha Kissen Chamria, Motilal Chamria and their mother Anardevi Sethani (since deceased) for specific performance of an agreement

for sale of an immoveable property in Howrah claiming a sum of Rs. 11,03,063-8-3 and other reliefs. The suit was eventually decreed on compromise on the 19th April, 1926. Under the compromise decree the plaintiff became entitled to a sum of Rs. 8,61,000 from the respondents with interest at $6\frac{3}{4}$ per cent. with yearly rests from the date fixed for payment till realization. Part of the decretal sum was payable on the execution of the solenama and the rest by instalments within eighteen months of that date.

Within fifteen months from the date of the decree a sum of Rs. 10,00,987-15-6 is said to have been paid towards satisfaction of it. No steps were taken either by the judgment-debtors or the decree-holder regarding certification of most of those payments within the time prescribed by law. The judgment-debtors after the expiry of a long time made an application for certification but the decree-holder vehemently resisted it and declined to admit the payments. The result was that the court only recorded the payment of the last three instalments which had been made within ninety days before the application and the judgment-debtors had to commence a regular suit against the decree-holder for recovery of the amounts paid, and not admitted in the execution proceedings. In the year 1929 a decree was passed in favour of the judgment-debtors for the amount paid by them and not certified in the execution. In the meantime the decree-holder had realized further amounts in execution of the decree by taking out execution proceedings on two or three occasions. The amount for which a decree had been passed against the decree-holder was also thereafter adjusted towards the amount due under the consent decree.

On the 17th March, 1933, the decree was assigned by Durga Prasad to the appellant Keshardeo Chamria. The execution proceedings out of which these appeals arise were started by the assignee on the 10th October, 1936, for the realization of Rs. 4,20,693-8-9 and interest and costs. This execution had a chequered career. To begin with, the judgment-debtors raised

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an objection that the assignee being a mere benamidar of Durga Prasad Chamria had no *locus standi* to take out execution. This dispute eventually ended in favour of the assignee after about five years' fight and it was held that the assignment was *bona fide* and Keshardeo was not a benamidar of the decree-holder.

On the 17th July, 1942, Keshardeo made an application for attachment of various new properties of the judgment-debtors and for their arrest. Another set of objections was filed against this application by Radha Kissen Chamria. He disputed the correctness of the decretal amount, and contended that a certain payment of Rs. 1,60,000 should be recorded and certified as made on the 28th May, 1934, and not on the date the sum was actually paid to the decree-holer. This objection was decided by the Subordinate Judge on the 11th September, 1942, and it was held that the judgment-debtors were liable to pay interest on the sum of Rs. 1,60,000 up to the 12th October, 1936, and not up to the 4th July, 1941, as claimed by the assignee. On appeal the High Court by its judgment dated the 22nd June, 1943, upheld the decree-holder's contention, and ruled that the judgment-debtors were liable to pay interest up to the 4th July, 1941, on this sum of Rs. 1,60,000. The judgment-debtors then applied for leave to appeal to the Privy Council against this decision and leave was granted. On the 13th February, 1945, an application was made to withdraw the appeals, and withdrawal was allowed by an order of the court dated the 20th February, 1945. Thus the resistance offered by the judgment-debtors to the decree-holder's application of the 17th July, 1942, ended on the 20th February, 1945.

The records of the execution case were then sent back by the High Court and reached the Howrah Court on the 28th February, 1945. The decree-holder's counsel was informed of the arrival of the records by an order dated the 2nd March, 1945. The hearing of the case was fixed for the 5th March 1945. On the 5th March, 1945, the court made the following order:—

"Decree-holder prays for time to take necessary steps. The case is adjourned to 10th March, 1945, for order. Decree-holder to take necessary steps by that date positively."

The decree-holder applied for further adjournment of the case and on the 10th the court passed an order in these terms:—

"Decree-holder prays for time again to give necessary instructions to his pleader for taking necessary steps. The petition for time is rejected. The execution case is dismissed on part satisfaction."

When the decree-holder was apprised of this order, he, on the 19th March, 1945, made an application under section 151, Civil Procedure Code, for restoration of the execution and for setting aside the order of dismissal. On this application notice was issued to the judgment-debtors who raised a number of objections against the decree-holder's petition to revive the execution. By an order dated the 25th April, 1945, the Subordinate Judge granted the decree-holder's prayer and ordered restoration of the execution. The operative part of the order is in these terms:—

"On 10th March, 1945, the decree-holder again prayed for time for the purpose of giving necessary instructions to his pleader for taking steps. That petition was rejected by me. On 10th March, 1945, by the same order—I mean the order rejecting the petition for adjournment—I dismissed the execution case on part satisfaction. The learned counsel on behalf of the present petitioner wants me to vacate the order by which I have dismissed the execution case on part satisfaction. He has invoked the aid of section 151, Civil Procedure Code, for cancellation of this order and the consequent restoration of the execution case. *I would discuss at the very outset as to whether I was justified in dismissing the execution case in the same order after rejecting the petition of the decree-holder for an*

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adjournment without giving him an opportunity to his pleader to make any submission he might have to make after the rejection of the petition for time. It is clear from the order that the fact that the petition for time filed by the decree-holder on 10th March, 1945, was rejected by me was not brought to the notice of the pleader for the decree-holder. It seems to me that there was denial of justice to the decree-holder in the present execution proceeding inasmuch as it was a sad omission on my part not to communicate to his pleader the result of this petition he made praying for an adjournment of this execution proceeding and *at the same time* to dismiss the execution case on part satisfaction which has brought about consequences highly prejudicial to the interest of the decree-holder. I think section 151, Civil Procedure Code, is the only section which empowers me to rectify the said omission I have made in not communicating to the pleader for the decree-holder as to the fate of his application for an adjournment of the execution case and as such I would vacate the order passed by me dismissing the execution case on part satisfaction. The ends of justice for which the court exists demand such rectification and I would do it. The learned Advocate-General on behalf of the judgment-debtor Radha Kissen has argued before me that this court has no jurisdiction to vacate the order passed by me on 10th March, 1945, dismissing the execution case on part satisfaction. His argument is that section 48, Civil Procedure Code, stands in my way inasmuch as the law of limitation as provided in the above section debars the relief as sought for by the decree-holder in the present application. I do not question the soundness of this argument advanced by the learned Advocate-General. The facts of this case bring home the fact that in the present case I am rectifying a sad omission made by me which brought about practically a denial of justice to the decree-holder and as such the operation of section 48, Civil Procedure Code, does not come to the assistance of the judgment-debtor Radha Kissen."

It would have saved considerable expense and trouble to the parties had the dismissal for default chapter been closed for ever by this order of the Judge; the proceedings, however, took a different course. A serious controversy raged between the parties about the correctness of this obviously just order and after seven years it is now before us. An appeal and a revision were preferred to the High Court against this order. By its judgment dated 24th August, 1945, the High Court held that no appeal lay against it as the question involved did not fall within the ambit of section 47, Civil Procedure Code. It, however, entertained the revision application and allowed it, and remanded the case to the Subordinate Judge for reconsideration and disposal in accordance with the observations made in the order. The High Court took the view that the Subordinate Judge was in error in restoring the execution without taking into consideration the point whether the decree-holder's pleader could really take any step in aid of the execution if he had been apprised of the order of the court dismissing the adjournment application. This is what the High Court said:—

"The ground put forward by the Subordinate Judge in support of his order for restoration is that the order rejecting the adjournment petition should have been communicated to the pleader for the decree-holder but this was not done. We will assume that this was an omission on the part of the court. The question now is whether it was possible for the decree-holder to take any further steps in connection with the execution of the decree and thereby prevent the execution case from being dismissed for default. No evidence was taken by the learned Subordinate Judge on this point and even the pleader who was in charge of the execution case on behalf of the decree-holder was not examined.....If really the decree-holder was not in a position to state on that day as to what was the amount due under the decree for which he wanted the execution to be levied and if according to him it required elaborate accounting for the purpose

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of arriving at the proper figure it was not possible for him to ask the court to issue any process by way of attachment of the property on that date. It seems to us that the learned Judge should have considered this matter properly and he should have found on proper material as to whether the decree-holder could really take any steps after the application for adjournment was disallowed."

In sharp contrast to the opinion contained in the order of remand is the view now expressed by the High Court on this point in its final judgment under appeal:—

"One important circumstance which, in our opinion, tells in favour of the decree-holder is the fact we have noticed before, namely, that after the petition for time was rejected the court did not call on the execution case and otherwise intimate its decision to go on with it. In one sense this might be regarded as a mere error of procedure on the part of the court which it would be wrong to allow the decree-holder to take advantage of, but an error it was, as was admitted by the learned judge himself who had dealt with the matter, and we do not think his opinion can be lightly brushed aside. There can be no doubt that the learned judge was in the best position to speak as regards the actual proceedings in his court on the 10th March, 1945, and if he thought that it amounted to a 'denial of justice' to have rejected the petition for time and by the same order to dismiss the execution case, it is not for us to say that he was not right. It may well be that even if the case was called on the decree-holder's pleader would even then have been absent, but having regard to all the facts and circumstances of the case, we think the court might yet give the decree-holder the benefit of doubt in this matter, and assume in his favour that his pleader would have appeared before the learned judge and tried to avert a peremptory dismissal of the execution case, even though he or his client might not have been fully ready with all necessary materials for continuing the execution proceeding.

As we have pointed out before and as the court below has also found, it was possible for the decree-holder or his pleader to have submitted to the court some sort of an account of the decretal dues on that date after refusal of the adjournment but even if this could not be done, we still believe that the pleader, if he appeared, could have done something, either by drawing the court's attention to some of its previous orders or otherwise, by which a dismissal of the case might be prevented."

It was not difficult to envisage what the counsel would have done when faced with such a dilemma. He would have straightaway stated that the execution should issue for an amount which was roughly known to him, and that the court should issue a process for the arrest of the judgment-debtors. By such a statement he would have saved the dismissal without any detriment to his client who could later make another application stating the precise amount due and praying for additional reliefs.

After remand on the 13th March, 1946, the learned Subordinate Judge restored the execution case in respect of a sum of Rs. 92,000 only and maintained the order of dismissal in other respects. He held that the decree-holder was grossly negligent on the 5th and the 10th March, 1945, and that due to his negligence the execution case was dismissed in default; that even if his pleader had been informed of the order rejecting the application for adjournment he could not have taken any steps to prevent the dismissal of the execution; that the execution being now barred by limitation the judgment-debtors should not be deprived of the valuable rights acquired by them but at the same time they should not be allowed to retain the advantage of an acknowledgment of a debt of Rs. 92,000 made by the decree-holder.

Both the decree-holder and the judgment-debtors were dissatisfied with this order. The decree-holder preferred an appeal to the High Court and also filed an application under section 115, Civil Procedure

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Code. The judgment-debtors filed cross objections in the appeal and also preferred an alternative application in revision.

The appeal, the cross-objections and the two revision applications were disposed of together by the High Court by its judgment dated 17th February, 1947. The order dismissing the execution in default was set aside and the case was restored on terms. The decree-holder was held disentitled to interest on the decretal amount from 10th March, 1945, to the date of final ascertainment of the amount of such interest by the executing court and was ordered to pay to the judgment-debtors a consolidated sum of Rs. 20,000 by way of compensatory costs. He was to pay this amount to the judgment-debtors within two weeks of the arrival of the records in the executing court or have it certified in the execution. In default the appeal was to stand dismissed with costs and the cross-objections decreed with costs.

An application for leave to appeal to His Majesty in Council against this order was made by the judgment-debtors and leave was granted to them on 30th May, 1947. The decree-holder also applied for leave and he was granted leave on 27th June, 1946. Both the appeals were consolidated by an order of the court dated 4th December, 1947, and thereafter the appeals were transferred to this court.

On behalf of the decree-holder it was contended that the High Court was wrong in allowing the judgment-debtors Rs. 20,000 by way of compensation for costs, and that having regard to the terms of the compromise decree it had no jurisdiction to deprive the decree-holder of the interest allowed to him by the decree, and that it had neither power nor jurisdiction under section 115, Civil Procedure Code, to set aside the order dated 25th April, 1945, passed by Mr. Chakravarti, Subordinate Judge, under section 151 of the said Code and that the interlocutory remand order of the High Court being without jurisdiction, all subsequent proceedings taken thereafter were null and void.

The learned counsel for the judgment-debtors not only supported the judgment of the High Court to the extent it went in their favour but contended that the High Court should have refused to restore the execution altogether and that the assumption made by it that the decree-holder's pleader could do something to prevent the dismissal of the case or could present some sort of statement to the court was wholly unwarranted and unjustifiable. It was urged that it ought to have been held that the decree-holder was guilty of gross negligence and he was himself responsible for the dismissal of the case, and that it was not necessary to formally call on the case after the rejection of the petition for adjournment and that a valuable right having accrued to the judgment-debtors by efflux of time, they should not have been deprived of it in the exercise of the inherent powers of the court.

It is unnecessary to consider all the points taken in these appeals because, in our opinion, the point canvassed on behalf of the decree-holder that the order of remand was without jurisdiction and that all the proceedings taken subsequent to the order of the executing court reviving the execution were void, has force. The sole ground on which the Subordinate Judge had ordered restoration of the execution was that he had himself made a sad mistake in dismissing it at the same time that he dismissed the adjournment application without informing the decree-holder's counsel that the request for adjournment had been refused and without calling upon him to state what he wanted done in the matter in those circumstances. As the Subordinate Judge was correcting his own error in the exercise of his inherent powers, it was not necessary for him to investigate into the correctness of the various allegations and counter-allegations made by the parties. He was the best judge of the procedure that was usually adopted in his court in such cases and there is no reason whatsoever for the supposition that when the Subordinate Judge said that he had not given any opportunity to

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the decree-holder's pleader to take any steps in execution of the decree after the dismissal of the adjournment application he was not right. It could not be seriously suggested that such an opportunity was given to the decree-holder, the dismissal order of the execution having been made at the same moment of time as the order dismissing the application for adjournment. It is quite clear that the interest of justice demanded that the decree-holder's pleader should have been informed that his request for adjournment had been refused, and further given opportunity to state what he wanted done in that situation. It was wholly unnecessary in such circumstances to speculate what the pleader would have done when faced with that situation. The solid fact remains that he was not given that opportunity and that being so, the order dismissing the execution was bad and was rightly corrected by the court on its own initiative in the exercise of its inherent powers.

The point for determination then is whether such an order could be set aside by the High Court either in the exercise of its appellate or revisional powers. It is plain that the High Court had no jurisdiction in the exercise of its appellate jurisdiction to reverse this decision. In the remand order itself it was held that it was difficult to say that the order by itself amounted to a final determination of any question relating to execution, discharge or satisfaction of a decree and that being so, it did not fall within the ambit of section 47, Civil Procedure Code. We are in entire agreement with this observation. The proceedings that commenced with the decree-holder's application for restoration of the execution and terminated with the order of revival can in no sense be said to relate to the determination of any question concerning the execution, discharge or satisfaction of the decree. Such proceedings are in their nature collateral to the execution and are independent of it.

It was not contended and could not be seriously urged, that an order under section 151 simpliciter is

appealable. Under the Code of Civil Procedure certain specific orders mentioned in section 104 and Order XLIII, rule 1, only are appealable and no appeal lies from any other orders. (Vide section 105, Civil Procedure Code). An order made under section 151 is not included in the category of appealable orders.

In support of his contention that an order made under section 151 may in certain circumstances be appealable, Mr. Daphtary placed reliance on two single Judge judgments of the Madras High Court and on a Bench decision of Oudh. [Vide *Akshia Pillai* v. *Govindarajulu Chetty*(1); *Govinda Padayachi* v. *Velu Murugiah Chettiar*(2); *Noor Mohammad* v. *Sulaiman Khan*(3)]. In all these cases execution sale had been set aside by the court in exercise of inherent powers and it was held that such orders were appealable. The ratio of the decision in the first Madras case is by no means very clear and the reasoning is somewhat dubious. In the other two cases the orders were held appealable on the ground that they fell within the ambit of section 47, Civil Procedure Code, read with section 151. It is unnecessary to examine the correctness of these decisions as they have no bearing on the point before us, there being no analogy between an order setting aside an execution sale and an order setting aside the dismissal of an application. The High Court was thus right in upholding the preliminary objection that no appeal lay from the order of the Subordinate Judge dated 25th April, 1945.

We now proceed to consider whether a revision was competent against the order of the 25th April, 1945, when no appeal lay. It seems to us that in this matter really the High Court entertained an appeal in the guise of a revision. The revisional jurisdiction of the High Court is set out in the 115th section of the Code of Civil Procedure in these terms :—

(1) A.I.R. 1924 Mad. 778.
(2) A.I.R. 1933 Mad. 399.
(3) A.I.R. 1943 Oudh 35.

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"The High Court may 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, and if such subordinate court appears:

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit."

A large number of cases have been collected in the fourth edition of Chitaley & Rao's Code of Civil Procedure (Vol. I), which only serve to show that the High Courts have not always appreciated the limits of the jurisdiction conferred by this section. In *Mohunt Bhagwan Ramanuj Das* v. *Khetter Moni Dassi*(1), the High Court of Calcutta expressed the opinion that sub-clause (c) of section 115, Civil Procedure Code, was intended to authorize the High Courts to interfere and correct gross and palpable errors of subordinate courts, so as to prevent grave injustice in non-appealable cases. This decision was, however, dissented from by the same High Court in *Enat Mondul* v. *Baloram Dey*(2), but was cited with approval by Lort-Williams J. in *Gulabchand Bangur* v. *Kabiruddin Ahmed*(3). In these circumstances it is worthwhile recalling again to mind the decisions of the Privy Council on this subject and the limits stated therein for the exercise of jurisdiction conferred by this section on the High Courts.

As long ago as 1894, in *Hajah Amir Hassan Khan* v. *Sheo Baksh Singh*(4), the Privy Council made the following observations on section 622 of the former Code of Civil Procedure, which was replaced by section 115 of the Code of 1908:—

"The question then is, did the Judges of the lower courts in this case, in the exercise of their

(1) (1897) 1 C.W.N. 617.
(2) (1899) 3 C.W.N. 581.
(3) (1931) I.L.R. 58 Cal. 111.
(4) (1883-84) L.R. 11 I.A. 237.

jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the case, and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity."

In 1917 again in *Balakrishna Udayar* v. *Vasudeva Aiyar*(1), the Board observed:—

"It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved."

In 1949 in *Venkatagiri Ayyangar* v. *Hindu Religious Endowments Board, Madras*(2), the Privy Council again examined the scope of section 115 and observed that they could see no justification for the view that the section was intended to authorize the High Court to interfere and correct gross and palpable errors of subordinate courts so as to prevent grave injustice in non-appealable cases and that it would be difficult to formulate any standard by which the degree of error of subordinate courts could be measured. It was said—

"Section 115 applies only to cases in which no appeal lies, and, where the legislature has provided no right of appeal, the manifest intention is that the order of the trial Court, right or wrong, shall be final. The section empowers the High Court to satisfy itself on three matters, (a) that the order of the subordinate court is within its jurisdiction; (b) that the case is one in which the court ought to exercise jurisdiction; and (c) that in exercising jurisdiction the court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. If the High Court is satisfied on those three matters, it has no

(1) (1917) L.R. 44 I.A. 261. (2) (1949) L.R. 76 I.A. 67.

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power to interfere because it differs, however profoundly, from the conclusions of the subordinate court on questions of fact or law."

Later in the same year in *Joy Chand Lal Babu* v. *Kamalaksha Choudhury*(1), their Lordships had again adverted to this matter and reiterated what they had said in their earlier decision. They pointed out—

"There have been a very large number of decisions of Indian High Courts on section 115 to many of which their Lordships have been referred. Some of such decisions prompt the observation that High Courts have not always appreciated that although error in a decision of a subordinate court does not by itself involve that the subordinate court has acted illegally or with material irregularity so as to justify interference in revision under sub-section (c), nevertheless, if the erroneous decision results in the subordinate court exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises under sub-section (a) or sub-section (b) and sub-section (c) can be ignored."

Reference may also be made to the observations of Bose J. in his order of reference in *Narayan Sonaji* v. *Sheshrao Vithoba*(2) wherein it was said that the words "illegally" and "material irregularity" do not cover either errors of fact or law. They do not refer to the decision arrived at but to the manner in which it is reached. The errors contemplated relate to material defects of procedure and not to errors of either law or fact after the formalities which the law prescribes have been complied with.

We are therefore of the opinion that in reversing the order of the executing court dated the 25th April, 1945, reviving the execution, the High Court exercised jurisdiction not conferred on it by section 115 of the Code. It is plain that the order of the Subordinate Judge dated the 25th April, 1945, was one that he had jurisdiction to make, that in making that order he neither acted in excess of his jurisdiction

(1) (1949) I.R. 76 I.A. 131. (2) A.I.R. 1948 Nag. 258.

nor did he assume jurisdiction which he did not possess. It could not be said that in the exercise of it he acted with material irregularity or committed any breach of the procedure laid down for reaching the result. All that happened was that he felt that he had committed an error in dismissing the main execution while he was merely dealing with an adjournment application. It cannot be said that his omission in not taking into consideration what the decree-holder's pleader would have done had he been given the opportunity to make his submission amounts to material irregularity in the exercise of jurisdiction. This speculation was hardly relevant in the view of the case that he took. The Judge had jurisdiction to correct his own error without entering into a discussion of the grounds taken by the decree-holder or the objections raised by the judgment-debtors. We are satisfied therefore that the High Court acted in excess of its jurisdiction when it entertained an application in revision against the order of the Subordinate Judge dated the 25th April, 1945, and set it aside in exercise of that jurisdiction and remanded the case for further enquiry.

The result therefore is that Appeal No. 12 of 1951 is allowed, as the interlocutory remand order of the High Court was one without jurisdiction and that being so, the subsequent proceedings taken in consequence of it, *viz.*, the order of the Subordinate Judge restoring the application for execution to the extent of Rs. 92,000, and the further order of the High Court on appeal restoring the execution case on terms, are null and void and have to be set aside and the order of the executing court dated the 25th April, 1945, restored. We order accordingly. Appeal No. 13 of 1951 is dismissed.

In the peculiar circumstances of this case we direct that the parties be left to bear their own costs throughout, that is, those incurred by them in the High Court in the proceedings which terminated with the remand order, the costs incurred in the subordinate court after the remand order, and the costs thereafter

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incurred in the High Court and those incurred in this court in these appeals.

Appeal No. 12 allowed.
Appeal No. 13 dismissed.

Agent for the appellant in C. A. No. 12 and respondent in C.A. No. 12: *P. K. Chatterjee.*

Agent for the respondents in C. A. No. 12 and appellants in C. A. No. 13: *Sukumar Ghose.*

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Oct. 27.

[MEHR CHAND MAHAJAN, CHANDRASEKHARA AIYAR and BHAGWATI JJ.]

Res judicata—Land acquisition proceedings—Dispute as to title between rival claimants—Decision after contest—Whether operates as res judicata *in subsequent suit—Effect of decision on mortgagees.*

Where the right to receive compensation for property acquired in land acquisition proceedings as between rival claimants depends on the title to the property acquired and the dispute as to title is raised by the parties and is decided by the Land Acquisition Judge after contest, this decision as to title operates as *res judicata* in a subsequent suit between the same parties on the question of title. The binding force of a judgment delivered under the Land Acquisition Act depends on general principles of law and not on s. 11 of the Civil Procedure Code, and the decision of a Land Acquisition Judge would operate as *res judicata* even though he was not competent to try the subsequent suit.

If a mortgagee intervenes in land acquisition proceedings and makes a claim for compensation, and any question of title arises about the title of the mortgagor in respect to the land acquired which affects the claim for compensation, he has every right to protect that title and if he defends that title and the issue is decided against his mortgagor, the decision would operate as *res judicata* even as against the mortgagee.

Certain premises which formed part of the estate of a deceased person were acquired in land acquisition proceedings. There was a triangular contest about the right to the compensation money between A and B, two rival claimants to a four annas