

Mohammed Shafi and ors. Vs. Chedu and ors.

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Court : Allahabad

Decided On : Oct-23-1929

Reported in : AIR1930All100

Appellant : Mohammed Shafi and ors.

Respondent : Chedu and ors.

Judgement :

1. The facts of the case are given in the judgment of the Court below and briefly are these: A suit in which there were several plaintiffs was dismissed on 14th July 1927. One of the plaintiffs applied to the first Court, namely, the Munsiff for the restoration of the suit after setting aside the order' of 14th July 1927 which we may mention, was an order under Order 17, Rule 3, Civil P.C. Two of the plaintiffs filed an appeal against the decree. While the appeal was pending, the application of one of the plaintiffs for restoration of the suit was heard and allowed, on 29th October 1927. The defendants thereupon came to this Court in revision. While the revision applications was still pending, a statement was made to the appellate Court that the Munsiff by his order dated 29th October 1927, had set aside the decree of 14th July 1927, against which the appeal was pending. As the decree was no longer subsisting: the appeal could not be maintained and it was dismissed. The High Court in exercise of its revisional powers, by its judgment dated 29th January 1928, set aside the Munsif's order of 29th October 1927, by which the suit had been restored. Within a few days of the passing of the order by the High Court, the appellants in the Court below (two of the plaintiffs) made an

application to it to revive the appeal which had been dismissed on the ground that the decree appealed against had been set aside. That application having been allowed, the defendants have come up in appeal. It is contended before us that there was no ground on which a review application could be entertained by the Court below.

2. It appears that the application filed by the appellants in the Court below was framed as an application for review of judgment. Conceding that no such application lay under the rules laid down in O. 47, Civil P.C. it seems to us there was ample ground on which the Court below could exercise its inherent jurisdiction to restore the appeal and hear it. The circumstances are very peculiar. The decree having been restored, it was necessary that the appeal should also be restored and heard. The Privy Council case of *Debi Bakhsh Singh v. Habib Shah* [1913] 35 All. 881 is a sufficient authority for such procedure. In the result we dismiss the appeal with costs.

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