Supreme Court of India
Chaube Jagdish Prasad And Another vs Ganga Prasad Chaturvedi on 5 December, 1958
Equivalent citations: 1959 AIR 492, 1959 SCR Supl. (1) 733
Author: K L.
Bench: Kapur, J.L.

PETITIONER:
CHAUBE JAGDISH PRASAD AND ANOTHER

Vs.

RESPONDENT:
GANGA PRASAD CHATURVEDI

DATE OF JUDGMENT:
05/12/1958

BENCH:
KAPUR, J.L.
BENCH:
KAPUR, J.L.
IMAM, SYED JAFFER
DAS, S.K.

CITATION:
1959 AIR 492 1959 SCR Supl. (1) 733
CITATOR INFO :
R 1970 SC1193 (8)
R 1970 SC1727 (7)
R 1979 SC 404 (23)

ACT:
Revision-Revisional Powers of High Court-jurisdiction of subordinate court dependent on existence of fact-Erroneous finding as to such fact-Competence of High Court to interfere-Code of Civil Procedure (Act V of 1908), S. 115.

HEADNOTE:
Landlord and Tenant-Accommodation-Agreed monthly rent New construction-Enhancement of rent-House Allotment Officer's findings-Power of the civil courts to interfere U. P. Templeton Control of Rent and Eviction Act, 1947 (U.P. 3 of 1947), SS. 2(a)(f) 3A, 5(4), 6.
In 1938 the respondent took on rent from the appellant the accommodation in dispute on a monthly rent of Rs. 21-4as. On January 28, 1950, the appellant made an application to the House Allotment Officer under s. 3A of the U.P. Temporary Control of Rent and Eviction Act, 1947, for an increase in rent, on the allegation that according to the instruction of the respondent lie had made a new

construction in January, 1949. The
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Officer considered that the accommodation was not a newly constructed one as the respondent had been a tenant from 1938, but he increased the rent to Rs. 40 per mensem on the basis of the building that was added by the new construction. The appellant thereupon instituted a suit under s. 5(4) Of the Act for the enhancement of " reasonable annual rent ". The respondent's defence inter alia, was that the new construction was undertaken in order to put up another storey on the top of the old building, that so far as the accommodation in his possession was concerned there was no new construction of accommodation after June 30, 1946, and that, therefore, the suit was not maintainable. The trial court found that as a result of the new construction the accommodation had increased and was of the opinion that the portion of the building which had been newly replaced must be treated as a new accommodation and hence the, court could determine its rent under s. 5(4). In revision, the High Court held that though the construction on the upper storey was a new construction, so far as the accommodation in the occupation of the respondent was concerned the construction could not be called a new one and therefore S. 3A of the Act was not applicable. Accordingly the revision petition was allowed and the suit was dismissed. On appeal by special leave to the Supreme Court it was contended for the appellant that the House Allotment Officer having decided in his favour the question of the date of construction which S. 3A of the Act authorised him to decide, the High Court could not in revision go into the correctness of the decision ; and, in any case, it was within the jurisdiction of the trial court to decide the question of the date of construction and in doing so it could decide rightly or wrongly, and as the matter was one of fact the High Court had no power to interfere under s. 115 Of the Code of Civil Procedure.

Held:(1) that a wrong decision made by the House Allot-
ment Officer under s. 3A of the Act or an order made by him in excess of his powers under that section could be rectified by a suit under S. 5(4) of the Act; and

(2)that the maintainability of the suit brought under s. 3A of the Act depended on the determination of the jurisdictional fact i.e., date of construction of the accommodation, whether it was after June 30, 1946, and if the court wrongly decided that fact and thereby assumed jurisdiction not vested in it, the High Court had the power to interfere under s. 115 of the Code of Civil Procedure, and once it had the power it could determine whether the question of the date of construction was rightly or wrongly decided.

Joy Chand Lal Babu v. Kamalaksha Chaudhury, (1949) L.R. 76 I.A. 131, relied on.

Queen v. Commissioner for Special Purposes of the Income

Tax, (1888) 21 Q.B.D. 313; Venkatagiri Ayyangar v. Hindu Religious Endowment Board, Madras, (1949) L.R. 76 I.A. 67 and Keshardeo Chamria v. Radha Kissen Chamria, [1953] S.C.R. 136, considered.

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Rai Brij Raj Krishna v. S. K. Shaw and Bros., [1951] S.C.R. 145, distinguished

The relevant provisions of the Act are set out in the judg-ment.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 153 of 1955. Appeal by Special Leave from the judgment and decree dated August 30, 1954, of the Allahabad High Court in Civil Revision Application No. 540 of 1951, arising out of the judgment and decree dated March 31, 1951, of the Court of the Additional Civil Judge, Mathura, in Suit No. 19 of 1950. G. C. Mathur, for the appellants.

C. B. Aggarwala and Ganpat Rai, for the respondent. 1958. December 5. The Judgment of the Court was delivered by KAPUR, J.-This is an appeal by special leave against the decision of the High Court of Judicature at Allahabad passed in revision under s. 115 of the Code of Civil Procedure. The landlord who was the plaintiff in the trial court is the appellant before us and the tenant who was the defendant is the respondent.

The facts of this appeal are that in 1938 the respondent took on rent the accommodation in dispute which is termed a ' tal' on a monthly agreed rent of Rs. 21-4 as. and was using the same for the purpose of stacking timber. A portion of it was a covered godown which had three walls and a kucha roof. On January 28, 1950, the appellant made an application to the House Allotment Officer under s. 3-A of the United Provinces (Temporary) Control of Rent and Eviction Act, 1947 (U. P. III of 1947) (hereinafter termed the Act) for the fixation of " reasonable annual rent " of the accommodation in dispute. He therein alleged that in January 1949 he had " constructed anew " a big godown 80 x 25 x 11 feet according to the instructions of the respondent and expended a fairly large sum of money on it and was therefore entitled to a monthly rent of Rs. 165. The House Allotment Officer fixed on February 18, 1950, the rent at Rs. 35 per mensem which on review was raised on May 25, 1950, to Rs. 40 per mensem. He held that the accommodation was not a newly constructed accommodation as the respondent had been a tenant from 1938. He determined the increase of rent on the basis of the building that was added by the new construction. He also held that:

" The cost of land, the floor area of godown and rent of other similar premises would be irrelevant as all of these existed before new construction and were included in rent before new construction ".

The appellant thereupon instituted a suit on the ground of inadequacy of the reasonable annual rent under s. 5(4) of the Act alleging that he had constructed the portion of the accommodation " anew " and put up ferro-concrete roof 80 x 25 feet and that the construction was undertaken at the request

of the respondent who had agreed to pay enhanced rent but had refused to do so; that although the House Allotment officer, Mathura, had fixed the rent of the accommodation at Rs. 35 which wag subsequently raised to Rs. 40 per mensem, the proper rent should not be less than Rs. 115 per mensem and therefore prayed for the enhancement of " reasonable annual rent ". The defence was that there was no construction at the request of the respondent but it had been undertaken in order to put up another storey on the top of the old building; that as far as the accommodation in possession of the respondent was concerned there was no new construction of accommodation after June 30, 1946; that the ferro-concrete roof had in no way benefited him, on the other hand the space at his disposal had diminished because of the number of pillars constructed and the lowering of the roof. He also pleaded that the suit was not maintainable under the Act and that no suit could be filed " after the order of the House Allotment Officer ". The relevant issues raised were :-

(1)" Whether the suit is not maintainable in view of any provisions of the Act No. 3 of 1947 ?

(2)Whether the suit after the fixation of rent by the House Allotment Officer is not maintainable ?

(5) What should be the reasonable and proper rent of the accommodation in suit ? "

The learned Additional Civil Judge found that the suit was not barred because of the Act; that the suit against the order of the House Allotment Officer was maintainable; that newly constructed accommodation on the whole was bigger and more spacious than the old kacha hall and that the accommodation had increased and after taking into consideration the amount spent on the construction be increased the " reasonable adequate rent " to Rs. 55-8-0. Against this decree of the learned Judge the respondent took a revision to the High Court under s. 115 of the Code of Civil Procedure. The High Court was of the opinion that if the accommodation was a new construction erected after June 30, 1946, the suit was maintainable and- the High Court could not interfere with the finding of the Civil Judge as to the amount of rent. If on the other hand, the construction was an old one, the suit did not lie and the agreed rent would continue to be payable. It also held that the construction on the upper storey was a new construction but as far as the accommodation in the occupation of the respondent was concerned the construction could not be called new construction and therefore B. 3-A was not applicable and as no suit lay at the instance of the landlord to have the agreed rent enhanced, the tenant was only liable to pay the agreed rent and no more. The revision petition was therefore allowed and the suit of the appellant was dismissed.

The main controversy raised between the parties was whether the High Court could, in revision under S. 115 of the Code of Civil Procedure, interfere with this decision of the trial court. The respective contentions were these: The appellant contended that it was within the jurisdiction of the Additional Civil Judge to decide the question of the date of construction of the accommodation and in doing so he could decide rightly or wrongly as the matter was within his jurisdiction and therefore the High Court had no power to interfere merely because in its opinion the decision was erroneous. In other words, this question was -merely one of the facts in issue between the parties unconnected with jurisdiction. He also contended that the House Allotment Officer having decided in his favour the question of the date of construction which s. 3-A of the Act authorises him to decide, his right to bring the suit was established and therefore the High Court could not in revision under s. 115, Code

of Civil Procedure, go into the correctness of that decision. The respondent's counsel on the other hand submitted that the decision of the court as to the date of construction was in this case a jurisdictional fact i.e. a fact which went to the root of the jurisdiction of the court because unless the accommodation was held to have been a new construction made after June 30, 1946, the appellant would be bound by the agreed rent and would have no right of suit under s. 5(4) and the court would have no jurisdiction to entertain the suit. In order to decide the question at issue, it is necessary at this stage to refer to the scheme of the Act. The object of the Act was to control letting and the rents of residential and nonresidential accommodations.

"Accommodation" was defined in s. 2(a) as follows:

2.(a) "accommodation means residential and non-residential accommodation in any building or part of the building and includes.....

" Reasonable annnal rent " is defined in s. 2(f):

2.(f) " Reasonable annual rent in the case of accommodation constructed before July 1, 1946, means (1)if it is separately assessed to municipal assessment, its municipal assessment plus 25 per cent thereon ; (2)if it is a part only of the accommodation so assessed, the proportionate amount of the municipal assessment of such accommodation plus 25 per cent. thereon ;

(3) if it is not assessed to municipal assessment-

(i)but was held by a tenant on rent between April 1, 1942, and June 30, 1946, fifteen times the rent for the one month nearest to and after April 1, 1942, and

(ii)if it was not so held on rent, the amount determined under section 3-A and in the case of accommodation constructed on or after July 1, 1946, means the rent determined in accordance with section 3-A ".

As to how reasonable annual rent of a building was to be determined was provided for in s. 3-A:

S.3-A " (1) In the case of any accommodation constructed after June 30, 1946, or falling under subclause (ii) of clause (3) of sub _ section (f) of section 2, the District Magistrate may, on the application of the land lord or the tenant, determine the reasonable annual rent thereof. (2)In determining the reasonable annual rent under sub- section (1) the District Magistrate shall take into account-

(a)if the accommodation was constructed after June 30, 1946, the cost of construction and of maintenance and repairs of the accommodation, its situation and any other matter, which in the opinion of the District Magistrate, is material and

(b) if it is accommodation-

(i) falling under clause (2) or sub-clause (1) of clause (3) of sub-section (f) of section 2, the principles therein ,set forth, and

(ii)falling under sub-clause(1) of clause (3) of subsection

(f) aforesaid, the principles set forth in clause (a) of sub-section (1) of section 6.

(3)Subject to the result of any suit filed under sub- section (4) of section 5, the rent fixed by the District Magistrate under this section shall be the annual reasonable rent of the accommodation."

" Agreed rent " was defined in s. 5(1) of the Act to be..... the rent payable for any accommodation to which this Act applies shall be such as may be agreed upon between the landlord and the tenant." Section 5(4) of the Act provided:

" If the landlord or the tenant, as the case may be, claims that the annual reasonable rent of any accommodation to which the Act applies is inadequate or excessive, or if the tenant claims that the agreed rent is higher than the annual reasonable rent, he may institute a suit for fixation of rent in the Court of the Munsif having territorial jurisdiction, if the annual rent claimed or payable is Rs. 500 or less, and in the Court of the Civil Judge having territorial jurisdiction if it exceeds Rs. 500, provided that the Court shall not vary the agreed rent unless it is satisfied that the transaction was unfair, and in the case of lease for a fixed term made before April 1, 1942, that the term has expired ".

Section 6 provided for the procedure as follows (1) " In determining the amount of annual or monthly rent in any suit under section 5 the court shall take into account-

(a)in the case of accommodation constructed before July 1, 1946, the pre-war rent, the reasonable annual or monthly rent, the prevailing rent on the date of the suit for similar accommodation in the locality, the cost of maintenance and repairs of such accommodation and any material circumstances proved by the plaintiff or the defendant,

(b)in the case of accommodation constructed on or after July 1, 1946, the cost of construction and of maintenance and repairs of accommodation, its situation and any other circumstance which the court may consider material. (2)No appeal shall lie from any decree or order of the Munsiff or the Civil Judge in a suit brought under sub- section (4) of section 5:

Provided that (except as regards the rate of rent but no further) the decree or order so passed shall not operate as res judicata between the parties or their representatives in interest in any suit or proceedings under any other law It is not necessary to refer to other sections of the Act. The Act therefore in the preamble sets out the objects of the Act. In s. 2(a) it defined the meaning of the word accommodation' to mean residential and non- residential accommodation in any building or part of the building and in s. 2(f) it laid down in three parts what the reasonable annual rent was, one part dealing with accommodation constructed before July 1, 1946, and assessed to municipal assessment, the second part with accommodation so constructed and not assessed to municipal

assessment but held by a tenant between April 1, 1942, and June 30, 1946, and the third part with accommodation constructed on or after July 1, 1946, and these last two were to be determined in accordance with the provisions of s. 3-A which empowered the District Magistrate to do so. Sub-section (1) of this section gave power to the District Magistrate to determine the reasonable annual rent in the case of accommodation constructed after June 30, 1946, or falling under cl. (ii) of sub-s. 3 of section 2 (f) i.e. if it was not assessed to municipal assessment though constructed before July 1, 1946, and was not held by a tenant between April 1, 1942, and June 30,1946. Subsection 2 of s. 3-A laid down the factors to be taken into consideration in determining the reasonable annual rent and under sub-s. 3 the rent so fixed was to be the annual reasonable rent of the accommodation but this was subject to the result of a suit filed under s. 5(4). Therefore under s. 3-A the District Magistrate was entitled to determine the amount of reasonable annual rent when either of the two facts on which his power depended was shown to exist i.e. (1) the accommodation was constructed after June 30, 1946, or (2) although it existed previously it was not assessed to municipal assessment and had not been held by a tenant on rent between April 1, 1942, and June 30, 1946. The District Magistrate's power to determine the rent under s. 3-A therefore was not confined to accommodation constructed after June 30,1946, alone. The rent determined by the District Magistrate under s. 3-A was the reasonable annual rent under the Act subject to the result of any suit filed under sub-s. (4) -of s. 5. A wrong decision by the District Magistrate under s. 3-A or an order made by him in excess of his powers under that section could be rectified by a suit under s. 5(4).

This provision of the Act i.e. s. 5(4) provided for three classes of suits, one by a landlord that the reasonable annual rent was inadequate and (2) by the tenant that the annual rent was excessive and (3) also by the tenant that the agreed rent was higher than the reasonable annual rent. Hence under this section the appellant landlord's right of suit was restricted to challenging the inadequacy of the reasonable annual rent but he could not sue for varying the agreed rent. The appellant in the present case brought his suit on the around of inadequacy of the reasonable rent as determined under s. 3-A and consequently its maintainability depended on the determination of the jurisdictional fact i. e. date of its construction, whether it was before or after June 30, 1946, on the decision of which would depend his right to bring the suit; because if there was no new construction, the agreed rent would be operative and the appellant would have no right of suit under s. 5(4) of the Act.

Consequently, by wrongly deciding this question the court would be entertaining a suit by the landlord for enhancement of the agreed rent and thereby assuming jurisdiction it did not possess and the landlord would be circumventing the restriction on his right to sue for enhancement of agreed rent which the law did not allow.

As the issues raised show the learned Additional Civil Judge was alive to the fact that the maintainability of the suit depended on the determination of this question. The appellant had specifically alleged that the accommodation had been constructed after June 30, 1946, a fact which was denied by the respondent. That gave rise to the first two issues and the learned Civil Judge held:-

" I am therefore of the opinion that portion of the building in suit which has been newly replaced must be treated as a new accommodation, and hence this Court can determine its rent under the provisions of s. 5(4). In view of the fact that it is a new accommodation no question of agreed rent arises and the landlord can bring a suit for fixation of rent ". Two facts therefore stand out clearly in the judgment of the trial court (1) that it was the existence of a newly constructed accommodation which gave jurisdiction to the court to determine its reasonable annual rent and (2) that as it was a newly constructed accommodation, the question of agreed rent did not arise.

The High Court, in our view, approached the question quite correctly when it stated that the question for determination was whether the accommodation had been constructed before or after June 30, 1946, and that if it was constructed before that date the suit was incompetent and if after, the suit would lie. The contention raised by the appellant in this Court was that the decision of the trial Court as to whether the accommodation was constructed before or after July 1, 1946, cannot be challenged in revision in the High Court and he relied on the following observation of Lord Esher, M. R., in the Queen v. Commissioner for Special Purposes of the Income Tax (1):-

" When an inferior court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider, what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may intrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the legislature are establishing such a tribunal or body with limited jurisdiction, (1) (1888) 21 Q.B.D. 313, 319.

they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction.

These observations which relate to inferior courts or tribunals with limited jurisdiction show that there are two classes of cases dealing with the power of such a tribunal (1) where the legislature entrusts a tribunal with the jurisdiction including the jurisdiction to determine whether the preliminary state of facts on which the exercise of its jurisdiction depends exists and (2) where the legislature confers jurisdiction on such tribunals to proceed in a case where a certain state of facts exists or is shown to exist. The difference is that in the former case the tribunal has power to determine the facts giving it jurisdiction and in the latter case it has only to see that a certain state of facts exists. In the present case the appellant asked for a determination of reasonable annual rent

under s. 3-A on the ground that the accommodation was constructed after June 30, 1946, and the House Allotment Officer therefore had power to determine the reasonable annual rent.

In order to give jurisdiction to the civil court there bad to be in existence a reasonable annual rent as defined under s. 2(f) whether it fell within its first two clauses or was determined under s. 3-A. The reason. able annual rent could be varied at the instance of the landlord or the tenant on the ground of its inadequacy or excess but the landlord could not. bring a suit to vary the agreed rent nor could the court entertain such a suit although it was open to the tenant to do so and the court could at his instance entertain such a suit. The proceedings before the civil court are not by way of an appeal from any order under s. 3-A made by the District Magistrate.

Section 115, Code of Civil Procedure, empowers the High Court, in cases where no appeal lies, to satisfy itself on three matters:- (a) that the order made by the subordinate court is within its jurisdiction; (b) that the case is one in which the court ought to exercise its jurisdiction; (e) that in exercising the 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. Per Sir John Beaumont in Venkatagiri Ayyangar v. Hindu Religious Endowment Board, Madras (1). Therefore if an erroneous decision of a subordinate court resulted in its exercising jurisdiction not vested in it by law or failing to exercise the jurisdiction so vested or acting with material irregularity or illegality in the exercise of its jurisdiction the case for the exercise of powers of revision by the High Court is made out. In Joy Chand Lal Babu v. Kamalaksha Chaudhury (2), the subordinate court gave an erroneous decision that the loan was a commercial loan and therefore refused to exercise jurisdiction vested in it by law and the Privy Council held that it was open to the High Court to interfere in revision under s. 115. Sir John Beaumont said at p. 142:

" There have been a very large number of decisions of Indian High Courts on s. 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-s. (c), nevertheless, if the erroneous decision results in the subordinate court exercising a jurisdiction not vested in it by law, (1)(1949) L.R. 76 I.A. 67, 73.

(2) (1949) L.R. 76 I.A. 131.

or failing to exercise a jurisdiction so vested, a case for revision arises under sub-s. (a) or sub.s. (b), and subs.

(c) can be ignored. The cases of Babu Ram v. Munnalal (1) and Hari Bhikaji v. Naro Vishvanath (2), may be mentioned as cases in which a subordinate court by its own erroneous decison (erroneous, that is, in the view of the High Court), in the one case on a point of limitation and in the other on a question of res judicata, invested itself with a jurisdiction which in law it did not possess; and the High Court held, wrongly their Lordships think, that it had no power to interfere in revision to prevent such a result. In the present case their Lordships are of opinion that the High Court, on the

view which it took that the loan was not a commercial loan, had power to interfere in revision under sub-s. (b) of s. 115 ".

In Keshardeo Chamria v. Radha Kissen Chamria (3) both these judgments of the Privy Council as also the previous judgments in Rajah Amir Hassan Khan v. Sheo Baksh Singh (4) and Balakrishna Udayar v. Vasudeva Aiyar (5) were reviewed and it was held that s. 115 of the Code of Civil Procedure applies to matters of jurisdiction alone, the irregular exercise or non exercise of it or the illegal assumption of it. Thus if a subordinate court had jurisdiction to make the order it 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, then the High Court has no power to interfere. But if on the other hand it decides a jurisdictional fact erroneously and thereby assumes jurisdiction not vested in it or deprives itself of jurisdiction so vested then the power of interference under s. 115 becomes operative. The appellant also relied on Rai Brij Raj Krishna v. S. K. Shaw and Bros. (6) where this Court quoted with approval the observations of Lord Esher in Queen v. Commissioner for Special Purposes of the Income Tax(7) and The Colonial Bank of Australia v. Willan where Sir James Co] ville said :- (1)(1927) I.L.R. 49 All. 454.

(3)[1953] S.C.R. 136.

(5)(1917) L.R. 44 I.A. 261.

(7)(1888) 21 Q B.D. 313, 319.

(2) (1885) I.L.R. 9 Bom. 432.

(4) (1884) L.R. 11 I.A.237.

(6) [1951] S.C.R. 145.

(8) (1874) L.R. 5 P.C. 417, 443.

" Accordingly the authorities..... establish that an adjudication by a Judge having jurisdiction over the subject matter is, if no defect appears on the face of it, to be taken as conclusive of the facts stated therein and that the Court of Queen's Bench will not on certiorari quash such an adjudication on the ground that any such fact, however essential has been erroneously found ". But these observations can have no application to the judgment of the Additional Civil Judge whose jurisdiction in the present case is to be determined by the provisions of s. 5(4) of the Act. And the power of the High Court to correct questions of jurisdiction is to be found within the four corners of s. 115. If there is an error which falls within this section the High Court will have the power to interfere, not otherwise.

The only question to be decided in the instant case is as to whether the High Court had correctly interfered under s. 115 of the Code of Civil Procedure with the order of the Civil Judge. As we have held above, at the instance of the landlord the suit was only maintainable if it was based on the

inadequacy of the reasonable annual rent and for that purpose the necessary jurisdictional fact to be found was the date of the construction of the accommodation and if the court wrongly decided that fact and thereby conferred jurisdiction upon itself which it did not possess, it exercised jurisdiction not vested in it and the matter fell within the rule laid down by the Privy Council in Joy Chandlal Babu v. Kamalaksha Chaudhury (1). The High Court had the power to interfere and once it had the power it could determine whether the question of the date of construction was rightly or wrongly decided. The High Court held that the Civil Judge had wrongly decided that the construction was of a date after June 30, 1946, and therefore fell within s. 3-A.

In these circumstances the appeal must fail and is dismissed with costs throughout.

Appeal dismissed.

(1) (1949) L.R- 76 I.A. 131.