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—1361—

APPELLATE CIVIL.

Before Mr. Justice Mitter and Mr. Justice Tottenham.

JHOTEE SAHOO (PLAINTIFF) v. OMESH CHUNDER SIRCAR
(DEFENDANT).*

1879
April 21.

Limitation—Appeal filed after time—Order under cl. b, s. 5 of the Limitation Act (Act IX) of 1871.

An order made *ex parte* under cl. b, s. 5 of the Limitation Act of 1871, permitting an appeal to be registered although filed beyond time, may, on proper cause being shown, be set aside by the Court which made it; but such an order made by a District Judge cannot be afterwards cancelled by a Subordinate Judge upon the appeal coming on for hearing before him.

Baboo *Sirish Chunder Chowdhry* for the appellant.

Baboo *Nolit Chunder Sen* for the respondent.

THE facts of this case appear sufficiently from the judgment, which was delivered by

MITTEE, J.—In this case we are of opinion that the Subordinate Judge was not competent to cancel the order of the District Judge by which the appeal of the appellant was allowed to be registered although filed beyond time. Under cl. b, s. 5 of the Limitation Act of 1871, the District Judge, being satisfied that the appellant had sufficient cause for not being able to present the appeal within the prescribed time, allowed it to be registered. No doubt this was

Appeal from Appellate Decrees, Nos. 314 and 315 of 1878, against the decree of the Subordinate Judge of Patna, dated the 8th December 1877, affirming the decree of the Sudder Munsif of that District, dated the 15th of September 1876.

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an *ex parte* order, because at that time the respondent had not entered appearance, and on a proper cause being shown, such an *ex parte* order is liable to be cancelled by the Court which passed it; but the Subordinate Judge in this case is not competent to revoke the order of the District Judge. The decision cited by the Subordinate Judge does not support his view of the law. In that case the appeal was ordered to be registered by a single Judge of the Allahabad High Court, and the case coming on for hearing, upon the objection of the respondent, who had not appeared at the time when the appeal was ordered to be registered, the Court held that the appeal should not have been registered, and cancelled the first order. There the same Court, upon proper cause being shown, cancelled the first order.

We therefore set aside the decree of the lower Appellate Court; dismissing the appeal of the defendant, and remand the case to that Court for retrial.

The pleader for the respondent contends, that as the order of the District Judge directing the appeal to be registered was passed without taking any evidence upon the matter, that order ought to be set aside by this Court under the provisions of s. 15 of the Charter Act. But under the circumstances of this case, we do not think that in the interests of justice we are called upon to interfere with that order of the Judge.

The costs of this appeal will abide the result. This order will govern appeal No. 315 of 1878.

TESTAMENTARY AND INTESTATE JURISDICTION.

Before Mr. Justice Pontifex.

IN THE GOODS OF RAM CHAND SEAL, DECEASED.

1879

May 8.

Letters of Administration to Hindus—Limited Grant—Succession Act (Act X of 1865), s. 190—Hindu Wills Act (Act XXI of 1870).

If Hindus take out letters of administration at all, they must take out general letters. Letters of administration limited to certain property cannot be granted.

THIS was an application for limited letters of administration by the representatives of one Ram Chand Seal, who was at the