

shad, who was residing in the house, and claimed the right to reside in a moiety thereof as her husband's widow. He therefore brought the present suit to eject her.

1876

---

 GAURI  
 v.  
 CHANDRA-  
 MANI.

The Court of first instance gave him a decree. The lower appellate Court held, on the ground that a moiety of the house was admittedly the separate property of Beni Parshad, that the defendant was entitled to the right of residence claimed by her, and dismissed the plaintiff's suit.

The plaintiff appealed to the High Court.

Lala *Lalta Parshad*, for the appellant.

The respondent did not appear.

The judgment of the Court was as follows :—

It does not appear to have been admitted that the property was held by Lachman Parshad and Beni Madho in equal shares, but assuming it was the joint property of the two brothers, the widow of Beni Madho is entitled to live in it, it being the house in which she resided with her husband. She cannot be ousted by a purchaser of her nephew's rights—*Mangala Debi v. Dinanath Bose* (1). The house is a small one, and it is not shown that one moiety is more than sufficient as a residence for the Mussamat. We shall not therefore disturb the decree of the lower appellate Court, but dismiss the appeal with costs.

---

## APPELLATE CIVIL.

---



---

 1876  
 June 30.

(*Mr. Justice Spankie and Mr. Justice Oldfield*).

BISHAN CHAND (DEFENDANT) v. AHMAD KHAN AND OTHERS (PLAIN-  
 TIFFS).\*

*Act IX of 1871, s. 5.a.—Institution of Suit—Limitation.*

*Held*, that where the period of limitation prescribed for a suit expired when the Court was closed for a vacation, and the Court, instead of re-opening after the vacation on the day that it should have re-opened, re-opened on a later day, and the suit was instituted when it did re-open, it was instituted within time.

---

\* Special Appeal, No. 534 of 1876, from a decree of the Judge of Ghazipur, dated the 19th April, 1876, reversing a decree of the Subordinate Judge, dated the 12th June, 1875.

1876

---

 BISHAN  
 CHAND  
 v.  
 AHMAD  
 KHAN.

This suit was instituted in the Court of the Subordinate Judge of Ghazipur on Monday, the 16th November, 1874. The cause of action was stated in the plaint to have arisen on the 2nd November, 1871.

The Subordinate Judge dismissed the suit, holding that the period of limitation applicable to it was two years. On appeal by the plaintiffs the District Judge held that the period applicable was three years, and that, as that period expired when the Court of the Subordinate Judge was closed, and the plaintiffs had instituted the suit on the day the Court re-opened, it was instituted within time.

The Court of the Subordinate Judge was closed from the 12th October, 1874, to the 13th November, 1874, in accordance with a list of days to be observed as close holidays in 1874 by the Courts subordinate to the High Court, such list being prepared by the High Court and published in the local *Gazette*, under the provisions of s. 17, Act VI of 1871. It should have re-opened on Saturday the 14th November, 1874, but did not do so until Monday the 16th November, 1874, under an order issued by the District Judge.

On special appeal by the defendant to the High Court it was contended that the suit was barred by limitation, not having been instituted on the 14th November, 1874.

Munshi *Hanuman Parshad* and Pandit *Ajudhia Nath*, for the appellant.

Pandit *Bishambar Nath* and Shah *Assad Ali*, for the respondents.

The judgment of the Court, so far as it is material to the above contention, was as follows:—

It appears that the Court should have sat on the 14th November, 1874, and if it had done so, the suit, according to the Judge's

view of the limitation that applies, would have been within time. The Judge does not notice the fact that the Court did not sit on the 14th, but confines his remarks to the point that, when the Court opened, the petition was filed, and the limitation being three years, not two years as found by the first Court, the suit was within time. It was contended that the Courts did not sit because the Judge had issued an unauthorised order that they were not to open until the Monday following Saturday the 14th, on which day they should have been opened after the close of the vacation. The Judge's unauthorised order cannot, it is urged, override the law of limitation, which must be applied strictly. It does not appear why this order was issued; probably it was to suit the convenience of the Judges on their return to their Courts after the vacation, because Sunday caused another break between Saturday and Monday. There was considerable difference of opinion before the passing of the present Limitation Law, as to whether Act XIV of 1859 was to be strictly applied in a case of this nature when a Court happened to be unexpectedly closed (1). In the present case the plaintiff appears to have brought his claim to the Munsifi and to have been ready to present it on the 14th. It is dated the 14th, so is the vakalat-nama, and the plaint was presented on Monday the 16th. In such a case we should not be disposed to apply the strictest interpretation, and looking at the terms of s. 5, cl. (a), Act IX of 1871, we do not think that we are called upon to do so. The section provides that, if the period of limitation prescribed for any suit, appeal, or application expires on a day when the Court is closed, the suit, appeal, or application may be instituted, presented, or made on the day that the Court re-opens. This was the course followed in the case before us, and the section appears to us wide enough, since it does not refer to vacations or holidays, to admit of the entertainment of the suit.

1876

---

 BISHAN  
CHAND  
v.  
AHMAD  
KHAN.

(1) In the following cases it was held that a plaintiff was not entitled to deduct the time the Court was closed from the period of limitation applicable to his suit under Act XIV of 1859, that Act giving no discretion to the Court to extend such period—*Rajkrishna Roy v. Dinobando Surma*, B. L. R., Sup. Vol. 369; S. C., 3 W. R., S. C. C. R. 5; *McKiligan v. Tarinee Churn Singh*, 3 W. R. 209; *Kudomessuree Dassee v. Ewan Ali*, 20 W. R. 167; *Ramasamy*

*Chetty v. Venkatarahellapaty Chetty*, 2 Mad. H. C. R. 468. In *Maneerun v. Inteej'an*, 3 W. R. 46, it was held otherwise.

Where the time fixed by the decree in a suit for pre-emption for the deposit of the purchase-money expired when the Court was closed, its deposit when the Court re-opened was held to have been made within time—*Muchul Kooer v. Laljee*, H. C. R., N.-W. P., 1870, p. 112.