

the grounds of appeal might be amended, the Judge should have prescribed a time within which it should have been again presented in an amended form. The case of *Ismail Sahib v. Arumuga Chetti* (1) appears to be in point. The decree of the lower appellate Court is set aside and the case remanded under s. 351 for trial by the lower appellate Court.

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JAGAN NATH
v.
LALMAN.

APPELLATE CIVIL.

1876
June 29.

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

TOTA RAM (DEFENDANT) v. SHER SINGH AND OTHERS (PLAINTIFFS).*

Act XVIII of 1873, s. 93, cl. (h)—Suit for Profits—Interest.

A Court of Revenue is competent, in a suit for profits, under s. 93, cl. (h), of Act XVIII of 1873, to award the interest claimed on such profits.

This was a suit under cl. (h), s. 93, Act XVIII of 1873, by five co-sharers to recover from the remaining co-sharer five-sixths of the profits, together with interest, of a certain mahál for 1280 fasli. The Court of first instance gave them a decree for the whole sum claimed. The lower appellate Court affirmed that decree.

On special appeal by the defendant to the High Court it was contended that the Court of first instance was not competent to give a decree for the interest claimed, the defendant not being liable under any provisions of Act XVIII of 1873 to pay interest.

Munshi *Hanuman Parshad* and Pandit *Bishambar Nath*, for the appellants.

Babu *Jogendro Nath*, for the respondents.

* Special Appeal, No. 559 of 1876, against a decree of the Judge of Meerut, dated the 29th February, 1876, affirming a decree of the Assistant Collector, dated the 27th August, 1875.

(1) 1 Mad. H. C. R. 427; see also *Hidayat Ali v. Maeraj Begum* H. C. R., N.-W. P., 1871, p. 202; *Begeo Begum v. Yusuf Ali*, H. C. R., N.-W. P., 1874, p. 139; *Sham Chand Koondo v. Kally Kanth Roy*, Marsh 336; *Ram Coomar Shahz v. Dwarkanath Hazra*, 5 W. R.

207; *Husrutoollah v. Abdool Kadir*, 6 W. R. 39; *Greesh Chunder Singh v. Ram Kishen Bhuttacharjee*, 7 W. R. 157; *Mengur Mander v. Huree Mohun*, 23 W. R. 447; and see also the Indian Limitation Act, s. 4, Explanation.

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

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It is true that the Rent Act does not expressly declare that interest will accrue on other sums which may be recovered in the Revenue Court except sums due in respect of rent, but neither does it declare the Revenue Courts incompetent to award interest, and it would be contrary to the policy of the Act to compel a plaintiff to resort to the Civil Court to obtain compensation in the way of interest for the default in payment of sums which are only recoverable in the Revenue Courts. As it has been the practice in the Revenue Courts to decree interest on arrears of profits, we shall not interfere with the decree of the Court below in this respect.

APPELLATE CIVIL.

1876

June 29.

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

GAUBI (PLAINTIFF) v. CHANDRAMANI (DEFENDANT).*

Hindu Law—Hindu Widow—Family Dwelling-house—Right of Residence.

A Hindu widow, who resides with her husband and the members of his family in the family dwelling-house while he is alive, is entitled to reside therein after his death, and cannot be ousted by the auction-purchaser of the rights and interests in the house of her husband's nephew.

Mangala Debi v. Dinanath Bose (1) followed (2).

The plaintiff in this suit was the auction-purchaser of the rights and interests in a certain dwelling-house of his judgment-debtor, Bindesri Parshad.

Bindesri Parshad was the son of Lachman Parshad, deceased, and nephew of Beni Parshad, also deceased.

When the plaintiff endeavoured to obtain possession of the house he was resisted by the defendant, the childless widow of Beni Par-

* Special Appeal, No. 469 of 1876, against a decree of the Subordinate Judge of Gorakhpur, dated the 17th February, 1876, reversing a decree of the Munsif, dated the 30th November, 1875.

(1) 4 B. L. R., O. J. 72; S. C., 12 W. (2) See, however, *Mohun Geer v. Tota*, H. C. R., N.-W.P., 1872, p. 153.
R., O. J. 35.