

sions of a Court of Civil Judicature of first instance, and open to appeals to the District or High Court under the rules applicable to regular appeals to those Courts. Now the orders and decisions passed under s. 113 are those on any question of title or proprietary right which arises out of objections preferred by co-sharers in possession in reply to the notice served on them under s. 111, by which they are required to state their objections to the partition taking place, that is, orders and decisions on a question of title or proprietary right arising properly out of objections preferred before any order has been made for effecting a partition, and referring to general questions of right and title affecting the right of the parties to claim partition, and not to such questions as have been decided in the case before us, which relate to the ownership of particular plots of land in the mauza, and which have arisen out of objections made after a partition has been ordered, and in proceedings taken for carrying it out, and which relate to details as to the distribution of the lands which form the subject of partition. In no way can it be held that the Collector's decision was passed under s. 113 so as to give a right of appeal. We therefore affirm the order of the Judge and dismiss this appeal with costs.

1880

SHIBBAN
v.
TILOK
CHANI*Appeal dismissed.**Before Mr. Justice Pearson and Mr. Justice Spankie.*TEJPAL, GUARDIAN OF KUNDAN LAL, MINOR (PLAINTIFF) v. KESRI SINGH
(DEFENDANT)*1880
January*Bond—Compound interest—Penalty.*

Held that a stipulation in a bond that the interest on the principal sum lent should be paid six-monthly, and, if not paid, should be added to the principal and bear interest at the same rate was not one of a penal nature.

THIS was a suit instituted in December, 1878, on a bond executed by the defendant in favour of the plaintiff on the 1st April, 1869. The defendant stipulated in this bond to pay Rs. 150 to the plaintiff on demand, and to pay interest on that amount every six months at the rate of Re. 1-8-0 per cent. per mensem, and in

* Second Appeal, No. 715 of 1879, from a decree of Maulvi Abdul Qayum Khan, Subordinate Judge of Bareilly, dated the 29th March, 1879, modifying a decree of Maulvi Matin-ud-din, Munsif of Sahaswan, dated the 10th February, 1879.

280

JPAL
v.
SINGH.

default that the interest should be added to the principal amount and should bear interest at the same rate. The plaintiff sought to recover Rs. 798-8-3, principal and interest, by the sale of the immoveable property hypothecated in the bond. The Court of first instance gave the plaintiff a decree for the principal amount and for an equal amount of interest, or for Rs. 300, in all. On appeal the lower appellate Court gave the plaintiff a decree for the principal amount, together with interest from the date of the execution of the bond to the date of the institution of the suit at Re. 1-8-0 per cent. per mensem, but refused to allow any compound interest on the ground that the stipulation in the bond for the payment of such interest was of a penal nature, which the Court was justified in refusing to enforce.

The plaintiff appealed to the High Court.

Munshi *Hanuman Prasad* and Babu *Oprokash Chandar Mukarji*, for the appellant.

The respondent did not appear.

The judgment of the Court (PEARSON, J. and SPANKIE, J.) was delivered by

PEARSON, J.—A stipulation in a bond that the interest on the principal sum lent shall be paid six-monthly, and, if not paid, shall be added to the principal and bear interest at the same rate, has never been held to be one of a penal nature. We are, therefore, constrained to allow the plea in appeal and to modify the lower appellate Court's decree by decreeing the claim in full with costs in all Courts.

Appeal allowed.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Oldfield.

RAM SUBHAG DAS (PLAINTIFF) v. GOBIND PRASAD AND ANOTHER
(DEFENDANTS).*

Computation of period of limitation—Act XV of 1877 (Limitation Act), s. 14.

On the 26th August, 1878, *R* and *B* joined in instituting a suit in the Court of the Subordinate Judge the period of limitation of which expired on the 21st September,

* First Appeal, No. 80 of 1879, from a decree of H. D. Willock, Esq., Judge of Azamgarh, dated the 5th May, 1879.