

erty sold ; but, on the contrary, the share sold is described as paying the amount of revenue assessed on the share of Ali Bakhsh in the Uparwar mahal only. We are therefore unable to agree with the lower Courts in holding that the sale of the 20th September, 1877, conveyed any rights to the defendant in the Kachar mahal, and, the title of the plaintiff being admitted, we decree the appeal, reversing the decrees of both the lower Courts. Costs in all the Courts will be paid by the defendant-respondent.

*Appeal allowed.*

*Before Mr. Justice Straight, Offg. Chief Justice, and Mr. Justice Mahmood.*

HARIHAR DAT (PLAINTIFF) v. SHEO PRASAD AND OTHERS (DEFENDANTS).\*

*Pre-emption—Acts or omissions by pre-emptor's authorized agent binding on pre-emptor.*

It is a general rule of pre-emption, that any act or omission on the part of a duly authorized agent or manager of the pre-emptor has the same effect upon pre-emption as if such act or omission had been made by the pre-emptor himself.

THE plaintiff in this suit, which was one to enforce the right of pre-emption, had been living in Nepal for sixteen years, leaving the property upon the ownership whereof his pre-emptive claim was based under the management of his son Kantika Prasad. The latter was found by both the lower Courts (Subordinate Judge and District Judge of Benares) to have relinquished pre-emption by acquiescing in the sale to which the present suit related. The plaintiff appealed from this decision. Upon remand by the High Court, it was found by the lower appellate Court that "Kantika Prasad's position with regard to his father's share was such as to legally warrant his buying or selling on his father's behalf." No objection to this finding was preferred by the plaintiff-appellant under s. 567 of the Civil Procedure Code.

Mr. Simeon and the Senior Government Pleader (Lala Juala Prasad), for the appellant.

Mr. T. Conlan and Munshis Hanuman Prasad and Kashi Prasad, for the respondents.

\* Second appeal No. 1199 of 1883, from a decree of D. M. Gardner, Esq., District Judge of Benares, dated the 31st May, 1883, affirming a decree of Babu Kashi Nath Biswas, Subordinate Judge of Benares, dated the 15th March, 1883.

1884

FIDA HUSAIN  
v.  
KUTUB HUSAIN.

1884

July 28.

1884

The Court (STRAIGHT, Offg. C. J., and MAHMOOD, J.) delivered the following judgment:—

HARIHAR  
DAT  
v.  
SIBO PRASAD

MAHMOOD, J.—It is a general rule of pre-emption that any act or omission on the part of a duly authorized agent or manager of the pre-emptor has the same effect upon pre-emption as if such act or omission had been made by the pre-emptor himself. The refusal of Kantika to purchase the property now in suit therefore debars the plaintiff from maintaining the present suit. The appeal is dismissed with costs.

*Appeal dismissed.*

## CIVIL REVISIONAL.

*Before Mr. Justice Mahmood and Mr. Justice Duthoit.*

GULAB RAI (PETITIONER) v. MANGLI LAL (OPPOSITE PARTY).\*

*Civil Procedure Code, ss. 2, 54 (c), 582, 622—“Decree”—Order rejecting plaint—Plaint held to include memorandum of appeal—Order rejecting appeal—Act XV of 1877 (Limitation Act), s. 4.—High Court’s powers of revision.*

An order rejecting a memorandum of appeal as barred by limitation is a “decree” within the meaning of s. 2 of the Civil Procedure Code; it is therefore appealable, and not open to revision by the High Court under s. 622 of the Code.

*Gajraj Singh v. Bhagwant Singh (1) and Dianatullah Beg v. Wajid Ali Shah (2) distinguished.*

THE facts of this case are sufficiently stated in the judgment.

Babu Jogindro Nath Chaudhri, for the petitioner.

Pandit Ajudhia Nath and Munshi Suka Ram, for the opposite party.

The Court (MAHMOOD and DUTHOIT, JJ.) delivered the following judgment:—

MAHMOOD, J.—This is an application under s. 622 of the Civil Procedure Code, for revision of an order of the District Judge rejecting an appeal as barred by limitation. The learned Pandit who has appeared on behalf of the opposite party has raised a preliminary objection that the order of the District Judge was a “decree” within the meaning of s. 2 of the Civil Procedure Code;

\* Application No. 117 of 1884, for revision under s. 622 of the Civil Procedure Code of an order of T. B. Tracy, Esq., Officiating District Judge of Bareilly, dated the 4th January, 1884.

(1) Weekly Notes, 1883, p. 255. (2) I. L. R., 6 All. 438.

1884  
July 29.