

1885  
 KRISTO  
 CHUNDER  
 GHOSE  
 v.  
 RAJ KRISTO  
 BANDYO-  
 PADHYA.

the defendant who brought the rent suit was no more than a shareholder in the zemindari rights, he could not sell the tenure. And we think it clear in point of law that, if the plaintiff prove his title, then the purchaser-defendant took no right as against him by the sale.

These are the only points on which we think it necessary to express our opinion.

The case must go back to the lower Appellate Court. There is no express finding that what was sold was sold in execution of a decree obtained by an 8-anna sharer. It is so stated in the plaint and certainly by implication in one at least of the written statements. And it is stated that the evidence is all one way, but there is no finding upon it; therefore the facts must be found by the lower Appellate Court. The lower Appellate Court will then consider the case on the merits—that is to say, it will find whether the plaintiff has established his title either under the alleged transfer to him, or by having been recognized as tenant by receipt of rent or otherwise, or by the length of his occupation or on any other ground. And if it be that the sale which took place and at which the defendant purchased, was a sale in a suit by an 8-anna sharer, then as a matter of law the title of the plaintiff will prevail.

The appellants will have the costs of this appeal. The costs in the Court below will be dealt with by the Court below.

*Appeal allowed.*

*Before Mr. Justice Wilson and Mr. Justice Beverley.*

1885  
 July 20. GUNGA DASS DEY (PLAINTIFF) v. RAMJOY DEY AND OTHERS  
 (DEFENDANTS).\*

*Appeal—Second Appeal—Civil Procedure Code, 1882, s. 584—Limitation Act, 1877, ss. 4 and 12—Time requisite for obtaining copy of decree.*

An order dismissing an appeal as being presented out of time under s. 4 of the Limitation Act, 1877, is a "decree passed in appeal" within the meaning of s. 584 of the Civil Procedure Code, 1882. A second appeal will therefore lie from such order. Where a decree was passed on the 22nd September, and application for a copy was made not until 20th, and then

\* Appeal from Appellate Decree No. 286 of 1884, against the decree of E. Towers, Esq., Judge of Tipperah, dated the 3rd of December 1883, affirming the decree of Baboo Protap Chunder Mozoomdar, Third Munsiff of Muradnagore, dated the 21st of September 1883.

with insufficient folios, and the Court was closed for the vacation from 30th September to 1st November, the deficient folios being filed on the day it re-opened, 2nd November, the copy delivered on the 6th, and the appeal filed on the 14th: *Held* that the appeal was out of time under s. 12 of the Limitation Act, the appellant not being entitled to a deduction of the time occupied in ascertaining what the requisite number of folios was.

1885  
 GUNGA DASS,  
 DEY  
 v.  
 RAMJOY  
 DEY.

THE facts are stated in the judgment appealed from, which was as follows:—

“This application must be rejected as out of time. The appellant is not entitled to a deduction of the time covered by the Dusserah vacation (30th September to 1st November.) The decree was prepared on the 22nd September; there was time to apply for and obtain the requisite copies between that date, and the 30th September, but the application for a copy was not made until the 29th, and then with insufficient folios. The deficient folios were filed on the day the Court re-opened (2nd November) and the copy was ready for delivery and delivered on the 6th November. The appeal was filed on the 14th. The requisite number of folios should have been filed with the application for the copy (General Rule and Circular Order, Civ. Ch. IV., p. 237, Rule 12b.) I can find no authority for the contention that the appellant is entitled to a deduction of the time occupied in ascertaining what the requisite number of folios was.”

Baboo *Balkant Nath Dass* for the appellant.

Baboo *Grish Chunder Chowdhry* for the respondents.

The judgment of the High Court (WILSON and BEVERLEY, JJ.) was as follows:—

This is an appeal against a decision of the District Judge of Tipperah, rejecting an appeal as having been presented out of time.

A preliminary objection has been raised that no appeal will lie in such a case to this Court. The question is, whether an order dismissing an appeal under s. 4 of the Limitation Act is a “decree passed in appeal,” from which a second appeal is allowed under s. 584 of the Code. We think that it is such a decree. By s. 2 of the Code an order rejecting a plaint is within the definition of “decree,” and by s. 582 the provisions hereinbefore contained are made to apply to appeals so far as such provisions are applicable. We think then that an order rejecting or dismissing an appeal is a decree of the Appellate Court under the terms of the definition.

1885  
 GUNGA DASS  
 DEY  
 v.  
 RAMJOY  
 DEY.

The decree against which the appeal was preferred was prepared on September 22nd, 1883, and the application for a copy was made on September 29th. From September 30th to November 1st the Court was closed for the Dusserah vacation. On the following day (November 2nd) the appellant filed some extra sheets of blank paper which he had not been able to procure on September 29th. The copy was ready and delivered on November 6th, and the appeal was filed on November 14th.

The appeal was thus presented 53 days after the date of the decree; but under section 12 of the Limitation Act the appellant is entitled to exclude the time requisite for obtaining a copy of the judgment. This time he would calculate as 39 days, that is to say, from the 29th September to 6th November, and if this calculation be allowed, the appeal is clearly within time. But the District Judge appears to consider that as the requisite number of folios or sheets of blank paper were not filed with the application, that application must be held to have been made on the date on which the deficient folios were supplied, *viz.*, November 2nd. According to this calculation, the appellant would be entitled to exclude five days only instead of 39 days, and the appeal would be barred.

We are asked in second appeal to say that the District Judge is wrong in the interpretation he has put on the words "the time requisite for obtaining a copy" in s. 12 of the Limitation Act.

We think that no hard and fast rule can be laid down to meet all cases that occur under that section. Ordinarily no doubt the application for copies of the judgment and decree should be accompanied with a sufficient number of sheets of stamped paper for the copies; and parties should not be allowed to extend the period prescribed for appeal by any unnecessary delay in putting in the requisite papers. But, on the other hand, it would be grossly unfair to disallow the application if the requisite papers were not procurable, or if a mistake were made in calculating the number of sheets required. Each case, we think, must be decided on its own merits. In the present case it is said that the paper was not procurable on September 29th, and it was put in on the next Court day (November 2nd). But it

does not appear how many sheets were wanting on September 29th, and whether the inability to procure them was noted on the application of that date. These facts, however, would be before the Judge, who was in a better position than this Court can be to say whether the omission to file the paper on September 29th was unavoidable or intentional. The contention before the Judge apparently was, not that the paper could not be procured, but that the appellant was entitled to a deduction of the time requisite for ascertaining the number of folios required. We think the Judge took a right view on this point, and we are not disposed to interfere.

The appeal is dismissed with costs.

*Appeal dismissed.*

*Before Mr. Justice Wilson and Mr. Justice Beverley.*

HURMUTJAN BIBI (PLAINTIFF) v. PADMA LOCHUN DAS  
AND OTHERS (DEFENDANTS,)\*

1885  
August 4.

*Land Acquisition Act (X of 1870), ss 9, 19, 39 and 40—Settlement of amount of compensation—Apportionment of compensation, Notice of Proceedings for—Right of suit to recover share of compensation.*

The apportionment of the compensation under s. 39 of Act X of 1870 is intended to be a proceeding distinct from that of settling the amount of compensation under the previous provisions of the Act, and any dispute as to the apportionment is only decided as between those persons who are actually before the Court. A separate notice therefore of the apportionment proceedings is requisite to bind any person by those proceedings, and where such a notice has not been served, any party interested, although served with notice of the proceedings for settling the amount of the compensation, cannot be considered a party to the proceedings for apportioning it, and is not barred, by the decision in the latter proceedings, from bringing a suit under the proviso to s. 40, to recover a share of the money so apportioned.

Baboo *Joygobind Shome* for the appellant.

Baboo *Sharada Charan Mitter* for the respondents.

The facts are sufficiently stated in the judgment of the Court (WILSON and BEVERLEY, JJ.) which was as follows:—

\* Appeal from Appellate Decree No. 1378 of 1884, against the decree of Baboo Ram Kumar Pal, Rai Bahadur, Subordinate Judge of Sylhet, dated the 3rd of May 1884, modifying the decree of Baboo Rajoni Nath Mitter, Munsiff of Shoonangunge, dated the 14th of May 1883.