

APPELLATE CIVIL.

1896

January 21.

Before Sir John Edge, *Kt.*, Chief Justice, and Mr. Justice Burkitt.

ABBASI BEGAM (PLAINTIFF) *v.* NANHI BEGAM AND OTHERS (DEFENDANTS).^{*}
Civil Procedure Code, section 403 et seqq—Application for leave to sue in form of
pauperis—Subsequent payment of Court fees as for a regular suit—Limita-
 tion—Act No. XV of 1877, (*Indian Limitation Act*) section 4, Sch. ii, Art.
 104.

A. B. applied for leave to sue as a pauper for the recovery of certain dower alleged to be due to her. Upon her right to sue as a pauper being disputed by the persons proposed by her in her application for leave to sue as a pauper as defendants to the suit, A. B. paid into Court, the Court fee necessary for a regular suit to recover the amount claimed, and prayed that her original application might be treated as the plaint in the suit and the suit proceeded with in the ordinary manner. In the meantime, however, the period of limitation prescribed by art. 104 of sch. ii of Act No. XV of 1877 for a suit to recover deferred dower had expired. Held that the suit was barred by limitation, and that section 5 of Act No. XV of 1877 could not be applied. *Shinner v. Ords* (1) distinguished. *Balkaran Rai v. Gobind Nath Tewari* (2); *Jaini Prasad v. Bachu Singh* (3) and *Naraini Kuar v. Mahhan Lal* (4), referred to.

THE facts of this case are fully stated in the judgment of the Court.

Babu Jogindro Nath Chaudhri and Maulvi Ghulam Mujtaba, for the appellant.

Messrs. A. H. S. Reid for the respondents.

EDGE, C. J. and BURKITT, J.—This is the plaintiff's appeal from the decree of the Subordinate Judge of Bareilly dismissing the plaintiff's suit for dower. The plaintiff's case was that she and Muhammad Mohib Ali Khan, who was generally known as Nabha Sahib and who was a member of the Rampur family, went through the ceremony of marriage in the *nikah* form some fifteen or sixteen years prior to 1893, that is to say, in 1877 or 1878. The plaintiff's case further was that it was agreed at the time of the *nikah* ceremony that her dower should be a lakh and

^{*} First appeal No. 294 of 1893 from a decree of Maulvi Jafar Husain, Subordinate Judge of Bareilly, dated the 5th September 1893.

(1) I. L. R., 2 All. 241; s. c. 4, (2) I. L. R., 12 All. 129.
 C. L. R. 331. (3) I. L. R., 15 All. 65.

(4) I. L. R., 17 All. 526.

twenty-five thousand rupees. Nabba Sahib is dead : the dower has not been paid : hence this suit.

Nabba Sahib died on the 17th of October 1889. The period of limitation for a suit for deferred dower is prescribed by article 104 of the second schedule of the Indian Limitation Act, 1877, and that period is three years from the date, in this case, when the marriage was dissolved by death. On the 16th of October 1892, the three years' period of limitation expired, but the Civil Court at Bareilly being closed for the Dasehra vacation prior to the 17th of October 1892, and remaining closed until the 25th of October in that year, the period of limitation was extended until the opening of the Court. That is the result of the first paragraph of section 5 of the Act. On the 25th of October 1892, Musammat Abbasi Begam, who claims the dower, presented, under section 403 of Act No. XIV of 1882, an application for permission to sue as a pauper. The application was in the form of a plaint with the prayer that she might be allowed to sue as a pauper. On the 25th of October 1892, when that application was presented, the Court ordered a notice to issue to the proposed defendants to show cause, and on the same 25th of October a notice was issued to the proposed defendants requiring them to show cause on the 10th of December following why Abbasi Begam should not be allowed to sue as a pauper. That notice was issued under section 408 of Act No. XIV of 1882. On the 10th of December 1892, the Court passed an order adjourning the case until the 4th of February 1893. We may say that the application for leave to sue as a pauper had been entered as a miscellaneous case and not registered as a suit. When the 4th of February came, the defendants, who appeared under the guardianship of the Collector of Moradabad, filed a written statement, in which it was alleged that Abbasi Begam was in possession of cloths and gold and silver ornaments worth thousands of rupees ; that the Collector had redeemed certain jewelry of hers worth Rs. 3,550, and had handed it over to her, and that she had in her possession jewelry, ornaments and goods worth about Rs. 22,000. That written statement was apparently filed as the

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defendant's case on which they would rely at the hearing of the miscellaneous application of Abbasi Begam for permission to sue as a pauper. It had the desired effect, for on the same day, namely the 4th of February 1893, Abbasi Begam prayed for an adjournment, as she was not prepared to go on. The adjournment was granted on the terms of her paying the pleader's fee for the day. That fee was paid, and the case stood adjourned to the 6th of February, which was the next Court day. On the 6th of February Abbasi Begam presented a petition praying that her petition of the 25th of October 1892, might be treated as her plaint in the suit, and she brought into Court court fee stamps to the value of Rs. 1,549-8-0, which were the stamps necessary for filing a regular suit. She alleged in her petition that her friends with difficulty had raised the money for her. If her case had been a true one, and she was a pauper, there was no necessity to put her friends to the trouble of raising the Rs. 1,549-8. But in fact her case as regards pauperism was false. There is evidence upon the record, and there has been no attempt made to contradict it, which shows that the woman was not a pauper. Mirza Muhammad Husain, who had been the general attorney of Nabba Sabib, tells us that he had told the Collector that Abbasi had goods and furniture worth about Rs. 25,000. She herself says that she had presented a petition to the Collector, apparently to have some ornaments redeemed, and that the Collector having redeemed them had made the ornaments over to her. The facts and dates to which we have referred are sufficient to show that Abbasi had no intention of paying court fees, and had every intention to persist in her application for leave to sue as a pauper, until the Collector, as the agent of the Court of Wards and the guardian of the defendants, on the 4th of February filed his answer to her petition, and that answer no doubt Abbasi Begam could not meet and did not attempt to meet. The Subordinate Judge on the 6th of February 1893, misunderstood and misapplied the principle of the decision* in *Skinner v. Orde* (1), and made an order by which the petition for permission to sue as

(1) I. L. R., 2 All. 241; s. C., 4 C. L. B., 331.

a pauper was to be treated as the plaintiff in the suit. The Subordinate Judge did not observe that the case of *Skinner v. Orde* was decided on a prior Code of Civil Procedure, and that it was decided apparently to some extent on the belief that there was a practice in the Courts in India which justified what had taken place in that case. We have to deal with the present Code of Civil Procedure, and we know of no practice existing in these Provinces by which the Courts recognise any infringement of the specific provisions of the Court Fees Act. The present Code of Civil Procedure provides for the procedure to be followed on the presentation under section 403 of a petition for leave to sue as a pauper. It provides for an inquiry into the alleged pauperism, and enacts in section 409 that the Court having held that inquiry "shall then either allow or refuse to allow the applicant to sue as a pauper." Under section 410 if the application be granted, it shall be numbered and registered and shall be deemed to be the plaintiff in the suit. It was not necessary for the Legislature to enact that, if the Court did not grant permission to sue as a pauper, the proceedings could not be continued on the basis of the petition being numbered and registered and treated as a plaintiff. On the refusal to allow an applicant to sue as a pauper the application would be dismissed and there would be an end of it. Section 413 shows that on a refusal under section 409 to allow an applicant to sue as a pauper the refusal shall be a bar to any subsequent application of a like nature, but the applicant shall be at liberty to institute a suit in the ordinary manner, provided that he first pay the costs incurred by the Government. Instituting a suit in "the ordinary manner" includes the risk of section 4 of the Indian Limitation Act, 1877, applying to the suit at the date of its institution. It is not contemplated in the Code of Civil Procedure that a person may present a petition for leave to sue as a pauper, and, after the law of limitation has become a bar to any suit, elect to dispauperise himself and to proceed as if his petition for leave to sue as a pauper was a regular plaintiff in an ordinary suit at the date when it was filed. It has been decided by this Court that the effect of the Court Fees Act is

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that a plaint if not properly stamped within limitation is not a good plaint to prevent the law of limitation from applying to the suit. We may refer to the following decisions of this Court on the points which we have just been discussing—*viz.*, *Balkaran Rai v. Gobind Nath Tiwari* (1); *Jainti Prasad v. Bachu Singh* (2); *Naraini Kuar v. Makhan Lal* (3). On this ground alone we would dismiss this appeal. When the stamps in this case were paid into Court, any suit by Abbasi Begam for dower was already time-barred. The Subordinate Judge had no power under section 5 of the Indian Limitation Act, 1877, to extend the period of limitation beyond the 25th of October 1892; consequently his order of the 6th of February was ineffectual.

[The judgment then went on to consider the appeal upon the merits, but the remaining portion is not material for the purposes of this report.—Ed.]

Before Mr. Justice Know.

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January 24.

TULSI PRASAD (OBJECTOR) v MATRU MAL AND ANOTHER (APPLICANTS).
Act No. XIX of 1873 (N.-W. P. Land Revenue Act), sections 111, 112, 113, 114, 214, 219—Decision of question of title by a Court of Revenue—Ex parte decision—Appeal—Objection filed after time limited by Court but before action taken under section 113.

Held that the provisions of sections 214 and 219 of Act No. XIX of 1873 do not apply to an *ex parte* decision of a question of title by a Court of Revenue acting under section 113 of the said Act.

Held also that a Court of Revenue acting under section 113 of Act No. XIX of 1873 was not precluded from dealing with an objection brought before it merely by reason of such objection not having been filed within the time limited by the Court for filing objections, the Court not having up to that time taken any action under section 113 of the said Act. *Muhammad Abdul Karim v. Muhammad Shadi Khan* (4) distinguished.

The respondents Matru Mal and Behari Lal applied on the 14th of September 1891, under section 108 of the North-Western Provinces Land Revenue Act 1873, for perfect partition of their joint share in Kasba Purdilnagar. On this application the Assistant Collector fixed the 1st of December for filing objections under section

* Second Appeal No. 113 of 1895 from a decree of L. G. Evans, Esq., District Judge of Aligarh, dated the 13th December 1894, confirming an order of W. Tudball, Esq., Assistant Collector of Aligarh, dated the 23rd November 1892.

(1) I. L. R., 12 All., 129.

(3) I. L. R., 17 All., 526.

(2) I. L. R. 15 All., 65.

(4) I. L. R., 9 All., 429.