

APPELLATE CIVIL.

Before Sir John Edge, J., Chief Justice, and Mr. Justice Burkitt.

RADHAN SINGH AND OTHERS (PLAINTIFFS) v. KUARJI DICHHIT AND ANOTHER
(DEPENDANTS).*

Act No. I of 1872 (Indian Evidence Act), s. 9—Evidence, admissibility of—Copy of proceeding anterior to suit containing mention of the descent of one of the parties to the suit—Civil Procedure Code, section 568.

One of the questions in issue in a suit as to the pedigree of a certain family being whether one Gauri Shankar was son of Balwant Singh or of one Moajjam Singh, belonging to a totally different family from that of Balwant Singh, an attested copy of a *rubkar* in some proceedings long anterior to the suit was tendered in evidence, in which *rubkar* Gauri Shankar was described as the son of Balwant Singh. *Held*, that the *rubkar* was admissible in evidence under the provisions of section 9 of Act No. I of 1872.

THIS was an appeal in a suit in which certain members of a Hindu family sued as reversioners to have it declared that two mortgages, executed by a widow in another branch of the family, did not affect their reversionary interest in the property mortgaged. The defendants to the suit were the mortgagor and her mortgagee who had got decrees on his mortgages, brought the property to sale and purchased it himself. The plaintiffs set forth a pedigree in which they and the widow's late husband appeared as representing two of the three branches of the family of one Raja Ram. They produced five witnesses in support of the pedigree set up by them, two being members of the family and another the family *purohit*. The defendants set up a pedigree which was, in most respects, the same as that of the plaintiffs, but they cut off the branch to which, according to the plaintiffs, the widow's late husband had belonged from the plaintiffs' family and put it on to a totally different family. It thus became the principal issue in the suit to which family did the widow's branch belong, or, in its narrower form, was one Gauri Shankar, the son of one Balwant Singh, as the plaintiffs alleged, or the son of one Moajjam Singh, as was alleged by the defendants? The Court of first instance (Subordinate Judge of Jaunpur), on its finding as to this issue that the plaintiffs had not proved the

* First Appeal No. 130 of 1894, from a decree of Rai Anant Ram, Subordinate Judge of Jaunpur, dated the 31st March 1894.

1895

 RADHAN
 SINGH
 v.
 KUMARI
 DICHIT.

pedigree set up by them, dismissed the plaintiff's suit. There were many other issues, but such as were tried by the Court of first instance were decided in favor of the plaintiffs. The plaintiffs appealed to the High Court, and, having subsequently to the decision of the suit become possessed of a document which seemed to be material evidence on the question of pedigree, tendered that document in evidence under the provisions of section 568 of the Code of Civil Procedure. On this point the High Court, having discussed the evidence as to pedigree originally tendered, came to the conclusion that the Subordinate Judge had erred in rejecting on insufficient grounds the evidence tendered by the plaintiffs in support of their pedigree, decided that the document produced by the plaintiffs, as above described, was admissible in evidence, and ultimately decreed the appeal and remanded the case for trial on the remaining issues.

Mr. *W. K. Porter* and Babu *Durga Charan Banerji* for the appellants.

Munshi *Jwala Prasad* and Pandit *Sundar Lal* for the respondents.

The Court (EDGE, C. J., and BURKITT, J.) after discussing the evidence given in the Court below thus continued :—

On the evidence we are prepared to hold that the plaintiffs-appellants had made out their case. But their case does not rest there. The suit in the Court below was decided on the 31st of March 1894. This appeal was preferred to this Court on the 7th of June 1894, and on the 24th of April 1895 a vakil for the appellants presented an application to this Court for admission of evidence which was not before the Court below. That application was supported by an affidavit of one of the plaintiffs, which shows that after the decree in the Court below he, on the 20th of April 1894, was given by one Mangli Prasad an attested copy of a *rubkar* of the Magistrate of Jaunpur, dated the 7th of December 1832. The *rubkar* was a judgment delivered by the Magistrate in a proceeding between one Sheoratan Singh on one side and Gauri Shankar Singh and Dyal Narain Singh on the other, and related to a lease alleged to have been given by Bairisal Singh to one Ghisa Singh, father of Sheoratan. Mangli Prasad was the great-grandson of that

1895

BADHAN
SINGH
v.
KWARJI
DICHBIT.

Sheoratan Singh who was party to those proceedings. We are of opinion that the *rubkar* is admissible under section 9 of the Indian Evidence Act, 1872, and also being of opinion that the plaintiffs had shown substantial cause why we should admit the attested copy in evidence, we admitted the document under s. 568 of the Code of Civil Procedure. Now, that document puts the dispute in this case beyond question. It related to a dispute between the two zamíndárs of one of the villages now in suit and a person who alleged he was their tenant. These two zamíndárs were Gauri Shankar Singh and Dyal Narain Singh. Gauri Shankar Singh is referred to in that *rubkar* as the son of Balwant Singh. Bairisal Singh, who was one of the sons of Raja Ram Singh, is referred to in the same *rubkar* as the uncle of Gauri Shankar Singh and as the grantor of the lease to the father of Sheoratan Singh. The other zamíndár, who was a party to those proceedings, was Dyal Narain Singh, and he was described in the *rubkar* as the son of Sheo Narain Singh, deceased. Dyal Narain Singh and Sheo Narain Singh were men beyond all dispute descended from Raja Ram Singh. In our opinion that *rubkar* does establish the fact that in 1832 Gauri Shankar Singh was one of the zamíndárs of a village now in dispute and a nephew of Bairisal Singh, who admittedly was a son of Raja Ram Singh. The *rubkar* comes as it does with very great force. Long before the time when the plaintiffs became aware of the existence of this attested copy, they had, in the suit which had already been dismissed, pledged themselves to proving that Gauri Shankar Singh was a son of Balwant Singh, who was a son of Raja Ram Singh and a brother of Bairisal Singh. The copy is a genuine copy. It was not got for the purpose of instituting the present suit. The suit was not founded on any information supplied by it, and the record in which was the document of which this was a copy was destroyed in the Mutiny. And the copy comes from the proper custody of a descendant of one of the parties to the proceedings before the Magistrate. We find that Gauri Shankar Singh was son of Balwant Singh, who was a brother of Bairisal and Balwant, sons of Raja Ram, and that the plaintiffs are, as reversioners of Sheobaran Singh, entitled to sue. The Subordinate

Judge, having disposed of the suit, on the preliminary point of pedigree, did not try the issue as to whether there existed such necessity as entitled Musammât Gulab Kuar to make the mortgages in question or either of them. We set aside the decree of the Court below, and we remand the case under section 562 of the Code of Civil Procedure for disposal of such issues as arise in the case and have not already been disposed of. We allow this appeal with costs.

1895

BADHAN
SINGH
v.
KUARJI
DICHHT.

Appeal decreed.

FULL BENCH.

1895

November 28.

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

LEKHA (PLAINTIFF) v. BHAUNA AND OTHERS (DEFENDANTS) *

Civil Procedure Code, section 549—Security for costs—Failure of appellant to file security—Rejection of appeal—Appeal from order of rejection—Order for security not to state specific amount for which security is required.

An order rejecting an appeal under section 549 of the Code of Civil Procedure is not appealable either as an order or as a decree. *Siraj-ul-haq v. Khadim Husain* (1) overruled.

Where a Court, acting under section 549 of the Code, orders an appellant to give security for costs, it is not necessary that any specific sum for which security is to be given should be named in the order for security. It is sufficient for the order to direct the appellant to furnish security within a time to be stated "for the costs of the appeal" or "for the costs of the original suit," or "for the costs of the appeal and of the original suit." *Thakur Das v. Kishori Lal* (2) overruled on this point.

THE facts of this case and the arguments in support of the appeal are fully stated in the judgment of the Court.

Mr. J. Simeon for the appellant.

Babu Ratan Chand for the respondents.

The judgment of the Court (EDGE, C. J., KNOX, BLAIR AND BURKITT, J. J.) was delivered by EDGE, C. J. :—

This appeal was presented to this Court as an appeal from a decree of an appellate Court and was entered in the register of

*Second Appeal No. 1176 of 1893, from a decree of H. P. Mulock, Esq., District Judge of Moradabad, dated the 24th June 1893, confirming a decree of Pandit Rajnath, Subordinate Judge of Moradabad, dated the 29th March 1893.

(1) I. L. R., 5 All. 380.

(2) I. L. R., 9 All. 164.