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BEIJ MOHAN DAS v. MANNU BIBI.

In my opinion the judgment in *Ramjiwan Mal* v. *Chand Mal* (1) imposes a restriction on the application of section 14 of the Limitation Act which was not contemplated by the legislature. It is perfectly conceivable that there may be a *bonâ fide* mistake as to the proper Court in which a suit should be instituted. The Judges of this Court know for instance how difficult it is to define the boundary line which separates the jurisdiction of the civil Courts from the jurisdiction of the Courts of revenue. Had the legislature intended to put on section 14 of the Limitation Act the narrow interpretation which has been placed upon it in the ruling referred to above, I should have expected to find inserted in it, or in the last clause of section 3 of the Act, a proviso to the effect that nothing should be deemed to have been done in good faith which is done by reason of a mistake of law and not by reason of a mistake of fact.

BY THE COURT.—The order of the Court will be in terms of the order proposed by the Chief Justice.

Appeal decreed and cause remanded.

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March 30.

APPELLATE CIVIL.

Before Mr. Justice Banerji.

THE MAHARAJA OF BENARES (PLAINTIFF) v. DALJIT SINGH AND OTHERS (DEFENDANTS).*

Land-holder and tenant—Suit to recover arrears of rent from representatives of deceased tenant at fixed rates—Liability of representatives.

Held that the legal representatives of a deceased tenant at fixed rates who had died leaving the rent payable by him in arrears were liable for payment of such arrears to the extent of the assets of the tenant which had come into their hands, and that this liability was not affected by the question whether or not they took over the tenancy of the deceased themselves. *Lekhraj Singh* v. *Rai Singh* (1) referred to.

THE facts of this case are as follows:—

One Thakur Dayal Singh was a tenant at fixed rates under the plaintiff-appellant, the Mahárája of Benares. Thakur Dayal

* Second appeal No. 274 of 1896, from a decree of E. L. M. Eales, Esqr., District Judge of Benares, dated the 18th January 1896, confirming a decree of Maulvi Nizam-ud-din Ahmad, Assistant Collector of Benares, dated the 6th April 1895.

(1) I. L. R., 10 All., 587. (1) I. L. R., 14 All., 381.

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Singh's tenure was sold by auction, and his tenancy rights were purchased by the Mahárája on the 20th of April 1892. Subsequently, in March 1893, Thakur Dayal Singh died. On the 14th of January 1895 the Mahárája sued Supher Singh and Makhan Singh, the sons and heirs of Thakur Dayal Singh, for the arrears of rents of the fixed rate holding for 1299 Fasli.

The first Court dismissed the suit, holding that the heirs of Thakur Dayal Singh were not liable for the arrears of rent due by their father.

The plaintiff appealed, and the lower appellate Court (District Judge of Benares) dismissed the appeal. The District Judge based his decision on his interpretation of the Full Bench ruling of the High Court in *Lekhraj Singh* v. *Rai Singh* (1), and held that, inasmuch as the tenancy had not been taken over by the sons of Thakur Dayal Singh, neither were they liable to pay arrears of rent due by him.

The plaintiff thereupon appealed to the High Court.

Pandit *Sundar Lal*, for the appellant.

Munshi *Kalindi Prasad*, for the respondent.

BANERJI, J.—This appeal must prevail, and the learned vakíl for the respondent has frankly conceded that he cannot support the judgment of the lower appellate Court. The facts which gave rise to the suit were these. One Thakur Dayal Singh was a tenant at fixed rates of the plaintiff appellant. His rights as such were sold by auction, and purchased by the plaintiff in 1892. Thakur Dayal was in arrears for the period prior to the date of the auction sale. He died in 1893 leaving those arrears unpaid; thereupon the present suit was brought against his sons as his legal representatives for recovery of the arrears. The Courts below have dismissed the suit as against the legal representatives of Thakur Dayal Singh, and the learned Judge of the lower appellate Court has based his judgment on what he conceived to be the result of the ruling of the Full Bench in *Lekhraj Singh*, v. *Rai Singh* (1). He thinks that

(1) I. L. R., 14 All., 381.

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since the tenancy did not devolve on the defendants, they were not liable in any capacity for the arrears due by their father Thakur Dayal Singh. This view is clearly erroneous, and is not borne out by the ruling of the Full Bench referred to by the learned Judge. The question which arose in that case was whether a suit for arrears of rent due by a deceased tenant brought against the legal representatives of that tenant, who had succeeded him in his holding was cognizable by the Revenue Court or the Civil Court. It was held by the majority of the Judges constituting the Full Bench, that such a suit was cognizable by a Court of Revenue. It was not held in that case, that if the legal representative of the deceased tenant did not choose to take possession of the holding he would not be liable for the arrears due by the deceased tenant, although he might be in possession of the assets of the deceased. It is impossible that such a view could be entertained by the Full Bench. It may happen that a tenant, who has died leaving his rent in arrear, has left assets of large value which have passed to his legal representative. Surely it cannot be said that if the legal representative did not elect to take the holding of the deceased, he would not be liable for the arrears, although he might have taken possession of the assets of the deceased. In the judgment on which the learned Judge has relied it was observed by the learned Chief Justice that "the person upon whom the right of occupancy devolves is not bound to accept the tenancy, but, if he does accept it, he in my opinion, must accept it subject to its burdens, and one of those burdens is the legal liability to pay the rent which is in arrear and a suit for which is not barred by limitation. If such a person elects not to accept the right of occupancy, his liability would be limited to that of a legal representative to whom assets had come." The learned Judge was therefore in error in thinking that the mere fact of the holding of Thakur Dayal Singh not being in the possession of the defendants relieved them of liability to pay the rent due by the Thakur Dayal Singh. They as legal representatives of Thakur Dayal Singh would be liable to the extent of the assets which have come

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into their hands. It was not asserted on behalf of the defendants that they had not received any assets. It was admitted, as is indeed the fact, that they were the legal representatives of Thakur Dayal Singh. The existence of the arrears is also not denied. The plaintiff was therefore entitled to a decree against the defendants, their liability being limited to the extent of the assets of Thakur Dayal which have come into their hands. I make such a decree in favour of the appellant, and vary the decree of the lower appellate Court to that extent with costs here and in the Courts below.

Decree modified.

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

1897
April 8.

BHAGWAN DAI AND ANOTHER (OPPOSITE PARTIES) *v.* HIRA (APPLICANT).*

Civil Procedure Code, sections 108, 157—*Order setting aside* ex parte *decree —Appeal.*

No appeal will lie from an order made under section 157 read with section 108 of the Code of Civil Procedure setting aside a decree passed *ex parte* in default of appearance of the defendant on a day to which the hearing of the suit had been adjourned. *Jonardan Dobey* v. *Ramdhone Singh* (1) referred to.

MUSAMMAT Bhagwan Dai and another brought a suit in the Court of the Subordinate Judge of Meerut against one Hira, a minor under the guardianship of his mother, Musammat Lado. The case was partly heard, when, on a day to which the hearing of the suit had been adjourned, the defendant's pleader did not appear, and the Court proceeded with the case and made a decree *ex parte* in favour of the plaintiffs. Thereupon the defendant presented to the Court an application purporting to be an application under section 623 of the Code of Civil Procedure for review of judgment, the application being mainly based on the allegation that the defendant's pleader was ill and unable to appear at the

* First Appeal No. 121 of 1896, from an order of Babu Prag Das, Subordinate Judge of Meerut, dated the 12th September 1896.

(1) I. L. R., 23 Calc., 738.