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March 23.

FULL BENCH.

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

BRIJ MOHAN DAS (PLAINTIFF) *v.* MANNU BIBI AND ANOTHER (DEFENDANTS).*

Limitation—Act No. XV of 1877 *section* 14*—Suit instituted by mistake in wrong Court—Bond fide mistake of law.*

Section 14 of the Indian Limitation Act, 1877, applies to a case where a plaintiff has been prosecuting his suit in a wrong Court in consequence of a *bond fide* mistake of law.

Sitaram Paraji v. *Nimba* (1), *Huro Chunder Roy* v. *Surnamoyi* (2,, *Krishna* v. *Chathappan* (3), referred to. *Ramjiwan Mal* v. *Chand Mal* (4) considered.

THE facts of this case are fully stated in the judgment of Edge, C. J.

Pandit *Sundar Lal* and *Madan Mohan Malaviya*, for the appellant.

Munshi *Ram Prasad*, for the respondents.

EDGE, C. J.—The plaintiff had obtained a decree for money. The decretal amount was below Rs. 1,000. He sought to execute his decree by selling certain houses. One of the defendants to the suit filed objections under section 278 of the Code of Civil Procedure to the execution of the decree against the houses. These objections were allowed, and thereupon the plaintiff brought this suit to establish his right to bring the property to sale. The value of the property sought to be sold exceeded Rs. 1,000, and was in fact about Rs. 1,200. The plaintiff *bond fide* believing that, having regard to the value of the property, his suit was not within the jurisdiction of the Munsif, brought his suit in the Court of the Subordinate Judge of Allahabad. Subsequently the Subordinate Judge held that the suit should have been valued with reference to the amount of the decree sought to be executed and not with

* Second Appeal No. 1087 of 1894 from a decree of W. Blennerhassett, Esq., District Judge of Allahabad, dated the 28th August 1894, confirming a decree of H. David, Esq., Munsif of Allahabad, dated the 11th June 1894.

(1) I. L. R., 12 Bom., 320.
(2) I. L. R., 13 Calc., 266.
(3) I. L. R., 13 Mad., 269.
(4) I. L. R., 10 All., 587.

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reference to the value of the property sought to be sold. He decided he had not jurisdiction to try the suit and returned the plaint to the plaintiff to be presented to the proper Court. On the same day on which the plaint was returned the plaintiff presented his plaint to the Court of the Munsif, but at that time more than twelve months had expired since the date of the order allowing the objection to execution. The Munsif has held that the suit was barred by time. The District Judge in appeal considered he was bound to apply a ruling of this Court according to which a litigant proceeding on an error of law could not be held to be proceeding in good faith. The judgment to which I refer is that of *Ramjiwan Mal* v. *Chand Mal* (1). The section of the Limitation Act there specifically in question was section 5, and one of the Judges expressed an opinion that no honest mistake in law could bring a person within the terms of section 14 or section 5. He came to that conclusion by applying the legal maxim—*Ignorantia legis neminem excusat*—to a civil case. In my opinion the application of this maxim to the question before him was too wide. Of course no one can be allowed to plead that, in a common assault on another, he was acting in ignorance of the fact that the act was an unlawful one, nor could a defendant in a suit be heard to plead as a defence in an action for damage for breach of contract, that he believed in law he was justified in breaking his contract, if the law did not in fact afford such justification. There can be no doubt that in this case the plaintiff was prosecuting his suit in the Court of the Subordinate Judge in good faith. We need not decide whether or not the suit should have been filed originally in the Court of the Munsif. The mistake, if there was one, arose through ignorance of the law and will not exclude the plaintiff from the indulgence of section 14 of Act No. XV of 1877. That a mistake of law can be made in good faith most Judges would probably admit from their own personal experiences on the Bench. We have not been referred to any case in which the point directly in issue (and which was decided) was whether a person who had

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

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prosecuted a civil proceeding in good faith in a Court which from a defect of jurisdiction or from some other cause of a like nature, was unable to entertain it, was excluded from the protection of section 14 of Act No. XV of 1877, if the prosecution of such a civil proceeding in such a Court arose through his having made a mistake in law as to the Court which had jurisdiction to entertain the proceeding.

We were referred to several cases in which the question as to what was sufficient cause under section 5 of the same Act arose. In the case of *Sita Ram Paraji* v. *Nimba* (1) the Bombay Court held that ignorance of the law cannot be recognised as a sufficient reason for delay under section 5 of Act No. XV of 1877. In my opinion that proposition, which is really the proposition of the head note, went too far. No doubt, if a litigant alleged that he had never heard of the Indian Limitation Act of 1877, his ignorance of the existence of such an Act would not be a sufficient cause under section 5.

In *Haro Chunder Roy* v. *Surnamoyi* (2) the learned Judges decided, with regard to section 5, as to what is sufficient cause, that it is for the Judge in each case to exercise his discretion having regard to the particular facts established before him, and they declined to hold that a *bonâ fide* mistake as to the period of limitation could not in any circumstances be a valid ground for the admission of an appeal under section 5.

In *Krishna* v. *Chathappan* (3) the learned Judges said in reference to section 5:—"We are not prepared to hold that a mistake of law is in no circumstances a sufficient cause within the meaning of that section," and later on (p. 271):—"The true rule is whether under the special circumstances of each case the appellant acted under an honest, though mistaken, belief formed with due care and attention. Section 14 of the Limitation Act indicates that the legislature intended to show indulgence to a party acting *bonâ fide* under a mistake. We think that section 5 gives the Courts a discretion which in respect of jurisdiction is

(1) I. L. R., 12. Bom., 320. (2) I. L. R., 13 Calc., 266.
(3) I. L. R., 13 Mad., 269.

to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of *bona fides* is imputable to the appellant." I agree with this view, understanding that by "imputable to" the learned Judges meant "established against." I myself am conscious of having made many mistakes of law, and in my opinion section 14 is applicable to such a case as this.

I would allow the appeal, and, setting aside the judgment of the Court below, would remand the case under section 562 of the Code of Civil Procedure to the Court of first instance so that the suit may be decided on its merits. I would make the order with costs to the plaintiff in this Court and in the lower appellate Court.

BLAIR, J.—I acquiesce in the proposed order. I can gather nothing from the phraseology of section 14 to justify the drawing of a distinction between a *bonâ fide* mistake of fact and a *bonâ fide* mistake of law. The case upon the authority of which the Court below decided is *Ramjiwan Mal* v. *Chand Mal*. There in the judgment of one of the Judges I find broadly laid down a distinction which I am unable to draw. It is true that one Judge in his judgment took care to base his decision on a general consideration of the facts of the case, which included inexplicable delay on the part of the litigant. As, however, that case may well be misleading to litigants and their advisers, I am desirous of emphasizing my dissent from this proposition which it may well be supposed that case decided, *viz.*:—that an error in law does not fall within the scope of section 14.

BANERJI, J.—I am of the same opinion as the learned Chief Justice.

AIKMAN, J.—I concur with the learned Chief Justice in thinking this appeal should be allowed and in the order proposed by him.

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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.