

1898

QUEEN-
EMPRESS
v.
AHMADI.

commitment and return the case to the Deputy Magistrate of Gorakhpur with directions to give notice to the prosecution and to the accused of a convenient day, and on that day to hear all and such evidence as may be produced on behalf of the accused and after that to complete the inquiry according to law. Let the record be returned.

1898

February 2.

APPELLATE CIVIL.

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

MUZAFFAR ALI KHAN (DEFENDANT) v. KEDAR NATH (PLAINTIFF).*

Civil Procedure Code, sections 556, 558—Application to restore an appeal dismissed ex parte—Evidence—Practice.

When an application is made to restore an appeal which has been dismissed *ex parte* for default of appearance the applicant must produce all his evidence in support of the application before the Court to which it is made. If he does not do so and the application is dismissed, he cannot be allowed to supplement such evidence in a Court of appeal on appeal from the order dismissing his application. *Heri Das Mukerji v. Radha Kishen Das* (1) followed.

In this case an appeal was dismissed by the Additional District Judge of Moradabad for default of appearance, the pleader for the appellant being absent when the appeal was called on for hearing. An application for the restoration of the appeal to the list of pending appeals was made, but no affidavit in support of such application was filed therewith. The Additional District Judge dismissed the application on two grounds, first, that it was not accompanied by an affidavit, and, secondly, that it disclosed no sufficient cause for the failure of the appellant or his pleader to appear. Against this order of dismissal the applicant appealed to the High Court, tendering an affidavit in support of his petition for restoration of the appeal.

Maulvi *Abdul Majid*, for the appellant.

Pandit *Sundar Lal*, for the respondent.

* First Appeal No. 87 of 1897, from an order of F. E. Taylor, Esq., Additional District Judge of Moradabad, dated the 9th August 1897.

(1) Weekly Notes 1890, p. 166.

EDGE, C. J. and BURKITT, J.—No affidavit in support of the application was filed in the Court below. Affidavits are necessary, not only for the information of the Court but for the information of the opposite side, and an affidavit should have been filed in the Court below. We agree with the decision of this Court in *Hari Das Mukerji v. Radha Kishan Das* (1) and dismiss this appeal with costs.

1898

MUZAFFAR
ALI KHAN
v.
KEDAR
NATH.

Appeal dismissed.

PRIVY COUNCIL.

BALWANT SINGH (PLAINTIFF APPELLANT) v. RANI KISHORI

(DEFENDANT RESPONDENT).*

On appeal from the High Court for the North-Western Provinces at
Allahabad.

P. C.
1897
December
7th and 8th.
1898
February
18th.

Hindu law—Mitakshara—Power of a member of a joint family to alienate self-acquired immovables—Construction of words of a sanad granting an absolute estate of inheritance—Change of ancestral character of immovables—Mortgage and foreclosure—Bona fide re-acquisition for value by the mortgagor's descendant.

A father, being a member of an undivided family subject to the Mitakshara, can exercise full power of disposition at his own discretion over immovables which he has himself acquired, as distinguished from ancestral property.

The immovables alienated by a father's gift, disputed by his son, partly consisted of zamindari rights in villages which had been, at one time, ancestral in the family, but had been transferred to satisfy the debts of an ancestor, and had been acquired back by his descendant, the donor. As to one of these villages the Courts below had differed whether it was self-acquired property in the donor's hands. It had been mortgaged by the ancestors; and the mortgage had been foreclosed, under Regulation XVII of 1806, before having been re-acquired by the donor.

That the foreclosure and re-acquisition were genuine were facts found upon evidence, including that of prior, concurrent, decrees maintaining the foreclosure, as between other parties.

Held, that the re-acquisition was not a redemption of an estate inherited from an ancestor, and merely incumbered; but that the once ancestral character of this village had been destroyed by the foreclosure. Like the other villages alienated by the father's gift it was self-acquired by the donor.

Present :—LORDS HOBHOUSE, MACNAGHTEN, and DAVEY, and SIR R. COUCH.

(1) Weekly Notes, 1890, p. 166.