

a term of three years, should have directed that in default of furnishing security he should suffer imprisonment for the same period.

The Sessions Judge in answer to a notice issued by the High Court sent up a report, in which he submitted that there was nothing contrary to law in the order which he had passed, it being within his power to direct a person making default in finding security to suffer imprisonment for any period not exceeding three years. The learned Sessions Judge referred in support of his position to the case of *Queen-Empress v. Jafar* (1).

The Government Advocate (Mr. E. Chamier) appeared in support of the application.

Munshi *Haribans Sahai* for the opposite party.

The following order was passed :—

BLAIR and BURKITT, JJ.—We are not prepared at this moment to put a construction upon the words of section 123 of the Code of Criminal Procedure, to which our attention has been called, namely, the words “may pass such order on the case as it thinks fit.” But it is, in our opinion, absurd for a Court to order the detention of a person bound over under section 123 for a period less than that for which he is called upon to give security. Acting upon that view we enhance the period of rigorous imprisonment in this case from eighteen months to three years.

APPELLATE CIVIL.

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June 5.

Before Mr. Justice Blair and Mr. Justice Aikman.

MUHAMMAD AHMAD (DEFENDANT) v. MUHAMMAD SIRAJUDDIN

(PLAINTIFF).*

Act No VII of 1870 (Court Fees Act), section 7, cls. 5 and 6(c), 28—Suit undervalued—Power to extend time for payment of deficiency in Court fee—Civil Procedure Code, section 54—Limitation.

A suit for pre-emption of zamindari property was filed one day before the expiry of the prescribed period of limitation. The plaint stated the profits of the property to be Rs. 8-4-0, and should therefore have borne Court fee stamps to the amount of the proper Court fee on Rs. 123-12-0; but the valuation

* First Appeal No. 117 of 1900, from an order of Babu Nihal Chandra, Subordinate Judge of Shahjahanpur, dated the 13th June 1900. *

(1) Weekly Notes, 1899, page 151.

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given in the plaint was only Rs. 108-12-0, and the plaint was stamped accordingly. The plaint was reported by the officer of the Court to be properly stamped on the valuation; but when the case came on for hearing, the defendant objected that the relief had been undervalued. On this objection the Court found that Rs. 8-4-0 was the correct amount of profits, disallowing the plaintiff's application to be allowed to reduce the amount of profits stated in the plaint to Rs. 6-14-10, and rejected the plaint under section 54 of the Code of Civil Procedure.

Held that this was not a case falling within section 28 of the Court Fees Act, 1870; but one to which section 54 of the Code of Civil Procedure applied. The Court had no power to extend the time for making up the deficiency in the Court fee beyond the expiry of the prescribed period of limitation, and the plaint was rightly rejected.

THE facts of this case sufficiently appear from the judgment of the Court.

Maulvi *Ghulam Mujtaba*, for the appellant.

Mr. *Muhammad Raoof*, for the respondent.

BLAIR and AIKMAN, JJ.—This is an appeal from an order of the Subordinate Judge of Shahjahanpur remanding a case to the lower Court under section 562 of the Code of Civil Procedure. The suit was one for pre-emption. It was instituted on the 14th of January 1899, one day before the expiry of the period of limitation prescribed for such a suit. The amount of Court fee payable on the plaint was under clauses 5 and 6(c) of section 7 of the Court Fees Act, to be calculated on fifteen times the net profits of the property. The amount of the profits as entered in the plaint was Rs. 8-4-0, fifteen times of which sum is equal to Rs. 123-12-0. The plaint, however, gave the valuation of the property at Rs. 108-12-0. The plaint was properly stamped on this valuation, and the officer whose duty it was to examine the plaint reported that it was properly stamped. When the case came on for trial the defendant objected that the relief had been undervalued. Thereupon the plaintiff asked to be allowed to amend his plaint by reducing the sum stated as the annual profits from Rs. 8-4-0 to Rs. 6-14-10. If this had been granted the stamp would have been sufficient. The Munsif held that Rs. 8-4-0 was the correct amount of the profits and rejected this application. On the same day the Munsif rejected the plaint, professing to act under clause (c) of section 54 of the Code of Civil Procedure. The Munsif held that he could not, with

reference to the ruling of this Court in *Jainti Prasad v. Bachu Singh* (1), grant the plaintiff an extension of time for correcting the valuation and stamping his plaint accordingly. The plaintiff appealed. In his appeal he impugned both the order refusing amendment of the plaint and the order rejecting the plaint. On his memorandum of appeal he affixed a Court fee stamp calculated on the reduced amount which he wished to have entered in his plaint. As to this the Subordinate Judge held in concurrence with the Munsif that the proper valuation was Rs. 123-12-0, and that the memorandum of appeal was undervalued. He gave the plaintiff time to pay up the deficiency on the memorandum of appeal. This was done, and thereupon the Subordinate Judge allowed the appeal and sent the case back to the Munsif with direction to return the plaint for amendment of valuation and stamp. On the 20th of November, 1899, the Munsif allowed the plaintiff one week's time within which to pay in the deficiency in Court fee. This order was signed by the plaintiff's pleader. On the 4th of December, 1899, that is, fourteen days after the order of the 20th of November had been passed, the plaintiff's pleader presented an application, saying that he had not received information of the order of the 20th of November until the 27th of November, and with this application tendered the Court fee. The Munsif called on the pleader to prove that he had not received information of the order of the 20th until the day mentioned by him. The pleader failed to give any evidence whatever, either by affidavit or otherwise, in support of his assertion. The Munsif, after examining one of his clerks, held that the pleader had information of the order either on the 20th or at latest on the 21st of November. It seems to us that if the pleader had not got information of the order allowing a week for the payment of the deficient Court fee until the last day of that period, he would have noted this when he signed the order. The Munsif, on the 8th of December, rejected the plaint for the second time. The plaintiff again appealed to the Subordinate Judge. He renewed the plea that his pleader had not been informed of the order of the 20th of November until the 27th idem. The Subordinate Judge overruled this plea, agreeing with the Munsif on the

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point. The plaintiff further pleaded that the plaint should not have been rejected after the deficiency in Court fee had been made good. What happened was this, that on the 4th of December 1899, the plaintiff's pleader filed a petition bearing a stamp of Re. 1-8, that is, the amount by which the stamp on the plaint was deficient. The Munsif ordered this to be brought up in the presence of the other side, and on the 8th of December passed an order rejecting the plaint. The learned Subordinate Judge, as regards this plea, says, "as the deficiency had been made good before the plaint was rejected, and as the lower Court could have extended the time, I am of opinion that the lower Court, instead of rejecting the plaint, ought to have extended the time. I therefore allow the appeal, and for the second time send back the case under section 562 of the Code of Civil Procedure." It is against this order that the present appeal has been filed.

We are of opinion that this appeal should succeed. The case was clearly one falling within section 54 of the Code of Civil Procedure. The stamp affixed on the plaint was correct on the plaintiff's valuation, and that valuation was an under-valuation of the relief which was sought. The learned counsel for the respondent argues that the case comes within section 28 of the Court Fees Act. But we cannot agree with this contention. The plaint was properly stamped according to the plaintiff's own valuation. The mistake or inadvertence referred to in section 28 of the Court Fees Act is the mistake or inadvertence of the Court or its officer. In this case the officer of the Court, having reference to the valuation given by the plaintiff, rightly reported that the plaint was properly stamped. It may be that had he gone over the plaintiff's calculation he would have discovered the mistake. We are not prepared to hold, and no authority has been cited to us for holding, that it was the officer's duty to check the plaintiff's calculation. Being of opinion then that the case falls within section 54 of the Code of Civil Procedure, the Court could not fix a time either under cl. (a) or cl. (b) of that section, so as to extend the prescribed period for limitation of suits. Moreover we cannot agree with the learned Subordinate Judge in his view that the Munsif ought, in the circumstances of this case, to have extended the time. Even if he had power to do so, the

conduct of the plaintiff throughout was such as to disentitle him to any indulgence. For the above reasons we allow the appeal with costs, and, setting aside the order of the lower appellate Court, restore that of the Court of first instance.

Appeal decreed.

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Before Mr. Justice Knox and Mr. Justice Burkitt.

SHEOBALAK SINGH (PLAINTIFF) v. LACHMIDHAR AND ANOTHER
(DEFENDANTS).*

Pre-emption—Wajib-ul-arz—Interpretation of document.

The clause in the wajib-ul-arz of a village relating to pre-emption gave a right of pre-emption against a stranger, and at the price paid by the stranger, firstly, to a "hissadar ek jaddi," secondly to a "hissadar patti," and, thirdly, to a "hissadar deh." *Held* that, in the absence of specific words to that effect, the clause above referred to could not be construed so as to give a right of pre-emption to a hissadar of a superior class upon a sale to a hissadar of an inferior class. *Ilahi Jan v. Pheku* (1) and *Ilahi Bakhs v. Ghulam Abbas* (2) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi *Kalindi Prasad*, for the appellant.

Manvi *Muhammad Ishaq*, for the respondents.

KNOX and BURKITT, JJ.—The question we have to decide in this case is one as to which there has been some conflict of judicial authority in this Court. It was considered in the case of *Ali Jan v. Pheku* (1) to which one of us was a party, in *Ilahi Bakhs v. Ghulam Abbas* (2) and in the unreported case Second Appeal No. 775 of 1892, *Kamaluddin v. Syed Ata Husain*, to which also one of us was a party. The position in the last cited case was exactly the same as in the case now under appeal.

We have here a sale-deed purporting to convey to the vendee Lachmidhar a share in two villages Sandhi and Rahmanpur. The wajib-ul-arz of the former gives a right of pre-emption against a stranger, and at the price paid by the stranger, firstly, to the "hissadars ek jaddi" (*i.e.*, those descended with the vendor

* Second Appeal No. 247 of 1899, from a decree of Maulvi Muhammad Abdul Ghafur, Subordinate Judge of Jaunpur, dated the 17th December 1898, reversing a decree of Maulvi Mubarak Husain, Munsif of Jaunpur, dated the 11th August 1898.