

will, of course, be for the tenant to prove that in the particular year in question the portions of his holding, in respect of which he claims a deduction of rent were in the condition to which the custom is applicable, and if he does not prove this, he will have to pay the full rent of the holding. For these reasons we think that the decision of the Courts below were right, and we dismiss this appeal with costs.

Appeal dismissed.

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RAI.

Before Sir Arthur Strachey, Knight, Chief Justice, and Mr. Justice Banerji.
BENI PRASAD KUARI (PLAINTIFF) v. DHARAKA RAI AND ANOTHER
(DEFENDANTS)*

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March 21.

*Act No. XII of 1881 (North-Western Provinces Rent Act), section 93(a)—
Suit for rent—Limitation—Act No. XV of 1877 (Indian Limitation
Act), section 5.*

Section 5 of the Indian Limitation Act, 1877, applies to a suit under section 93(a) of the North-Western Provinces Rent Act, 1881. *Muhammad Husen v. Muzaffar Husen* (1) dissented from.

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

The Hon'ble Mr. Conlan, Mr. A. E. Ryves, and Pandit *Sundar Lal*, for the appellant.

Mr. *Abdul Majid*, for the respondents.

STRACHEY, C. J. and BANERJI, J.—This is an appeal in a suit for arrears of rent under section 93(a) of the North-Western Provinces Rent Act, No. XII of 1881, brought by the Maharani of Dumraon against certain tenants. The main defence was that by a local custom called *bal panchat* the tenants were entitled to a proportionate reduction of the rent for any year on account of any part of their holdings which was unculturable by reason of being submerged by water or covered by sand. The plaintiff contended that this plea was one which could not be given effect to in such a suit as this without contravention of the provisions of the Rent Act, and relied on the decision in *Radha Prasad Singh v. Baldeo Misr* (2). Upon this point the Courts below decided in favour of the defendants. For the reasons given (3) in our

* Second Appeal No. 692 of 1899, from a decree of Kunwar Bharat Singh, District Judge of Ghazipur, dated the 28th June, 1899, modifying a decree of Munshi Kashi Prasad, Assistant Collector of Ballia, dated the 22nd November 1898.

(1) (1898) I. L. R., 21 All., 22. (2) Weekly Notes, 1893, p. 20.
(3) See p. 270, *supra*.

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judgment just delivered in second appeal No. 587 of 1899, we think that, as regards this point, the decisions of the Courts below were right, and that so far as this question is concerned this appeal must fail.

The only other question is whether a portion of the claim is barred by limitation. The suit for rent relates to the following years:—(1) to the last two instalments of rent payable for 1302 F., (2) for 1303 F., (3) for 1304 F., (4) for the first two instalments of 1305 F. It is uncertain from the terms of the judgment and decree of the lower appellate Court whether that Court meant to hold that the suit was barred in respect of the fourth instalment for 1302 F. If it did mean that, it was clearly mistaken, and that is admitted on behalf of the respondents. The question relates to the first instalment claimed in this suit, that is the third instalment for 1302 F. That instalment fell due on the 10th April, 1895. Section 94, paragraph 1, of the Rent Act provides that “suits for arrears of rent or revenue, or for a share of the profits of a mahal, or of village expenses, or other dues, shall not be brought after three years from the day on which the arrears, share, expenses or dues became due.” This suit was brought on the 11th of April, 1898, that is, one day after the period of three years had expired. The last day of the three years, the 10th of April, 1898, was a Sunday. The 11th of April, 1898, the day when the suit was instituted, was the day when the Court re-opened. The plaintiff appellant relies on the first paragraph of section 5 of the Limitation Act, 1877, which provides that “if the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, presented or made on the day that the Court re-opens.” On this ground it is contended by the plaintiff that the suit is not barred by limitation. On behalf of the defendants, respondents, it is contended that section 5 of the Limitation Act is not applicable to a suit for rent under the Rent Act, 1881, and reliance is placed on section 6 of the Limitation Act, which provides that “when by any special or local law now or hereafter in force in British India, a period of limitation is specially prescribed for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed.” That section only shows that

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nothing in the Limitation Act is to affect or alter any period specially prescribed by a special or local law. But section 5 does not affect or alter the period of three years prescribed by the first paragraph of section 94 of the North-Western Provinces Rent Act. Section 5 does not extend any period of limitation. It assumes that the period prescribed for a suit has expired, and provides that nevertheless the suit may be instituted if the period expired on a day when the Court was closed. This construction of section 6 is in accordance with the cases which are collected in the note to section 6 in Mr. Starling's edition of the Limitation Act. The general effect of those cases is, that the provisions of the Limitation Act are applicable to proceedings under special or local laws, except so far as they affect or alter the periods prescribed by those special or local laws, unless the special or local law is a complete code by itself to which the general provisions of the Limitation Act cannot be applied without incongruity. This is very clearly explained by the judgment of Mr. Justice Mutusami Ayyar in *Veeramma v. Abbiah* (1). That, subject to these exceptions, the Limitation Act is applicable to suits and other proceedings under special laws, such as the Rent Act of 1831, clearly appears, we think, from the Act itself, which is a general law of limitation, and in particular from section 1, which expressly provides that certain portions of the Act are not applicable to suits under two special Acts named, the Indian Divorce Act and Madras Regulation VI of 1831. That, we think, greatly strengthens the inference that in regard to suits under other special or local Acts the provisions of the Limitation Act apply, subject, of course, to the qualifications already pointed out. It is, we think, impossible to hold that the Rent Act of 1831 constitutes by itself a complete code, to which, under the authorities already referred to, the provisions of the Limitation Act generally would not be applicable. It is clearly not complete as to procedure in general, for it has in a great variety of ways to be supplemented by the Code of Civil Procedure. It is particularly incomplete as regards provisions relating to limitation. So far, therefore, we can see nothing which would exclude the application of section 5, paragraph 1, of the Limitation Act to suits under the

(1) (1894) I. L. R., 18 Mad., 99.

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Rent Act. But in answer to this, section 203 of the Rent Act has been relied on. Section 203 provides that "whenever a Court is closed on the last day of any period provided in this Act for the presentation of any memorandum of appeal, or for the deposit or payment of any money in or into Court, the day on which the Court re-opens shall be deemed to be such last day." The contention is that, inasmuch as this section expressly embodies section 5, paragraph 1, of the Limitation Act, so far as that section relates to the presentation of an appeal, it impliedly excludes by its silence the application of section 5, paragraph 1, to the institution of suits. We do not think that this contention is correct. When sections 202 and 203 are carefully read, it is clear that they have reference exclusively to the computation of the periods of limitation prescribed by the Rent Act. In that respect they are of the same character as the provisions for computation of periods of limitation contained in Part III of the Limitation Act. The effect of section 203 is to make the day on which the Court re-opens part of the period prescribed by the Act for the appeal. Section 203 has nothing to do with the presentation of an appeal or the institution of any proceeding after the period prescribed has expired. On the other hand, section 5 of the Limitation Act has nothing to do with the computation of any period of limitation, but, as we have already pointed out, assumes that the period has expired. It is really an exception to, or qualification of, section 4, which requires, subject to the provisions contained in sections 5 to 25 inclusive, the dismissal of a suit, appeal or application brought after the period of limitation has expired. Reliance has been placed on the judgment of Mr. Justice Aikman in *Muhammad Husen v. Muzaffar Husen* (1). The learned Judge there held that a suit under section 93(b) of the North-Western Provinces Rent Act, the period of limitation for filing which expired on a Sunday, could not be instituted on the day when the Court re-opened, but was time-barred. At page 24 of the report the learned Judge says, "the provisions of Act No. XV of 1877 do not affect special or local laws which specially prescribe periods of limitation; consequently the plaintiffs are not entitled to take advantage of the general provisions contained in section 5 of that

(1) (1896) I L. R., 21 All., 22.

Act." We cannot agree with that view. Section 6 of the Act to which the learned Judge appears to refer does not say that "the provisions of the Act do not affect special or local laws which specially prescribe periods of limitation." It says that they do not affect or alter the period so prescribed. The learned Judge, we think, overlooks the difference in wording between section 6 of the present Limitation Act and section 6 of the Limitation Act of 1871. As pointed out in several of the cases to which we have referred, under section 6 of the Act of 1871, where any other law specially prescribed a period of limitation differing from that prescribed by the Act "nothing herein contained shall affect such law." In altering by section 6 of the present Act these words to "nothing herein contained shall affect or alter the period so prescribed," we must presume that the Legislature intended to alter the rule contained in the Act of 1871. The learned Judge also, we think, overlooks the difference which we have pointed out between affecting or altering a prescribed period of limitation, and allowing under the circumstance contemplated by section 5 a suit to be instituted after the prescribed period has expired. For these reasons we think that under section 5 of the Limitation Act, the plaintiff was entitled to institute on the 11th of April, 1898, the suit in respect of the third instalment of rent for 1302 Faslî, and that no part of the suit is barred by limitation. As regards the rest of the case, the lower appellate Court in its judgment refers to its judgment in appeal No. 19, to which second appeal No. 587 of 1899 before us relates, and says that the facts of this case are the same, and the questions involved are the same as those which he considered in his former judgment. In that former judgment the learned Judge upholds the decision of the Court of first instance as to the actual extent of the lands in question submerged or otherwise unculturable; and we think that in the present case therefore he similarly adopts as to this point the decision of the Court of first instance. Under these circumstances it is not necessary to remand the case to the lower appellate Court, and we think that the proper order is to allow the appeal, set aside the decree of the lower appellate Court, and restore that of the Court of first instance with costs.

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Appeal decreed.