

64, after the lapse of three years from the time when the account was stated. For these reasons we are of opinion that the learned Subordinate Judge was correct in the view which he took in holding that the claim as against these defendants was statute-barred. Accordingly we dismiss the appeal with costs.

Appeal dismissed.

1902

FAKIR
CHAND
v.
DAYA
RAM.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.
TULSA KUNWAR AND ANOTHER (DEFENDANTS) v. GAJRAJ SINGH AND
ANOTHER (PLAINTIFFS).*

1902
August 2.

Act No. XV of 1877 Appeal—Civil Procedure Code, section 584—(Indian Limitation Act), section 5—Discretion of Court.

Held that no second appeal will lie where a Court of first appeal has disallowed the appellant's plea of excuse for not having filed his appeal within limitation, exercising therein a judicial discretion after consideration of the facts, and not arbitrarily.

THE suit out of which the present appeal arose was brought to have a deed of gift, executed by a Hindu widow, set aside in so far as it was prejudicial to the plaintiffs' interests in the property dealt with thereby. The suit was valued in the plaint at Rs. 4,000. The plaintiffs' claim was decreed by the officiating Subordinate Judge of Shahjahanpur on the 14th of July 1899. The defendants appealed to the District Judge, but their appeal was not filed until the 8th of November 1899. It was therefore apparently barred by limitation. It would appear that the plaintiffs had previously instituted a suit on the same cause of action which they valued at Rs. 9,500. That suit had been withdrawn with liberty to bring a fresh suit, which was done some few days after the order. After the suit was decreed on the 14th of July 1899, the defendants sent the papers to a vakil of the High Court at Allahabad with a view to having an appeal filed. It so happened that the copy of the plaint sent to the vakil omitted the statement as to the valuation of the claim, and thus the vakil was led to suppose that the appeal might lie to the High Court. When, however, a copy of the decree was sent for, the mistake was discovered. This was on the 7th of August, and up to that time the District Judge considered that the appellants

* Second Appeal No. 1228 of 1900, from a decree of C. D. Steel, Esq., District Judge of Shahjahanpur, dated the 12th day of July, 1900, confirming the order of Babu Nihal Chandar, Officiating Subordinate Judge of Shahjahanpur, dated the 14th day of July, 1899.

1902

TULSA
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SINGH.

had shown sufficient cause for not presenting their appeal. But he held that there was no excuse for the delay which had occurred after the 7th of August, and accordingly dismissed the appeal as time barred. From this decree the defendants appealed to the High Court.

Dr. *Satish Chandra Banerji* (for whom *Munshi Gokul Prasad*) and *Babu Lalit Mohan Banerji*, for the appellants.

Pandit Sunder Lal, for the respondents.

STANLEY, C.J. and BURKITT, J.—An appeal in this case is not, in our opinion, maintainable. The suit, which was valued at Rs. 4,000, was decided on the 14th July, 1899. The defendants had, therefore, one month from the date of the decree for filing an appeal. They did not file the appeal until the 8th of November following. It would appear that before the present suit was instituted, a suit had been instituted in respect of the same cause of action, which was valued at Rs. 9,500, and in the copy of the subsequent plaint, which was served upon the defendants, the valuation was left blank. Consequently the defendants allege that they were not aware that the valuation had been reduced from Rs. 9,500 to Rs. 4,000, and were misled into the belief that an appeal lay to the High Court. They allege that they were not aware of their mistake until the 7th of August. In the Court below they alleged that this ignorance on their part was sufficient cause within the meaning of section 5 of the Limitation Act to have the time extended by the Court. The learned District Judge, after a careful consideration of the facts of the case, was of opinion that sufficient cause was shown for the delay up to the 7th August, 1899, but that there was no cause whatsoever for the further delay from that date until the 8th of November. Consequently he dismissed the appeal as time-barred. It is perfectly clear that he exercised a judicial discretion in this matter, and that he exercised it after a careful consideration of the facts, and not arbitrarily. Where a Court has exercised its discretion in a sound and reasonable way, the appellate Court has no power to interfere under the provisions of section 584 of the Code of Civil Procedure. Consequently the appeal fails, and is dismissed with costs.

Appeal dismissed.