

passed under section 521 setting aside an award. It is unnecessary to recapitulate the reasons which he has given distinctly and clearly in his judgment. We therefore overrule the preliminary objection, and as we hold that the learned District Judge had no jurisdiction to entertain the appeal from the order passed under section 521, we allow the appeal and we remand the appeal to the lower appellate Court under the provisions of section 562 of the Code of Civil Procedure, with directions that it be re-admitted on the file of pending appeals and be disposed of on the merits. The costs here and hitherto will follow the event.

Appeal decreed and cause remanded.

Before Mr. Justice Sir William Burkitt.

GHASI RAM (PLAINTIFF) v. HAR GOBIND AND OTHERS
(DEFENDANTS).*

Act No. VII of 1870 (Court Fees Act), sections 7, sub-sections (v) and (vi) and 12—Court fee—Pre-emption—Valuation of suit—Appeal—Act No. X of 1897 (General Clauses Act), section 3(59).

Held that the expression “the year next before the date of presenting the plaint” occurring in clause (e) of sub-section (v) of section 7 of the Court Fees Act, 1870, denotes a period of 365 days reckoning backwards from the date of presentation of the plaint.

Held also that where a Court had based its decision as to the valuation of a suit upon a wrong construction of the expression “the year next before the date of presenting the plaint,” an appeal was not precluded by section 12 of the Court Fees Act, 1870.

THIS was a suit for pre-emption of land not paying Government revenue. The plaintiff entered in his plaint as the value of the suit a sum which he alleged to be fifteen times the nett profits of the land for the year preceding the suit as prescribed by section 7, sub-section (v), of the Court Fees Act, 1870. The defendants disputed this valuation. On the issue thus raised the Court of first instance (Subordinate Judge of Moradabad) entered into a calculation of the amount of court fee payable on the plaint. The plaint was presented on the 16th July, 1902. The Court, however, took as the basis of its calculation the last

* Second Appeal No. 565 of 1904, from a decree of H. D. Griffin, Esq., District Judge of Moradabad, dated the 27th of February, 1904, confirming a decree of Lala Mata Parshad, Subordinate Judge of Moradabad, dated the 8th of December, 1902.

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entire Fasli year prior to the institution of the suit, that is, the year 1308 Fasli, which began in September, 1900, and ended in September, 1901. Calculating on the evidence before it the profits which accrued during that year the Court found that the valuation of the suit by the plaintiff was largely deficient and it accordingly dismissed the suit. On appeal by the plaintiff the lower appellate Court (District Judge of Moradabad) agreed with the Court of first instance on the question of valuation and confirmed its decree. The plaintiff appealed to the High Court.

Hon'ble Pandit *Sundar Lal* and Pandit *Baldeo Ram*, for the appellants.

Dr. *Satish Chandra Banerji* and Munshi *Gokul Prasad*, for the respondents.

BURKITT, J.—This is an appeal in a pre-emption suit, which was dismissed by the Court of first instance and the dismissal was affirmed by the Court of first appeal. The question to be decided here depends entirely upon certain provisions of the Court Fees Act. The property the subject-matter of the pre-emption suit, being land not assessed to Government revenue, its value for the purposes of court fees had to be ascertained under section 7, sub-section (vi) and (v), paragraph (c). The value to be put on the pre-emptive property according to section 7, sub-section (v)(c), was 15 times the nett profits which has arisen from the land during the year next before the date of presenting the plaint. The plaintiff entered a certain amount in his plaint alleging it to be 15 times the profits as prescribed by the clause I have just cited. The defendants pleaded that the court fee paid by the plaintiff was insufficient, and after some delay in fixing the issue, the court of first instance fixed the year 1308 Fasli as being the year the profits of which should form the proper basis for estimating the value of the subject-matter of the suit. Now the plaint was presented on the 16th of July, 1902. The Fasli year 1308, which the Court of first instance held to be the year the profits of which it would consider, commenced on the 10th of September, 1900 and ended on the 28th of September, 1901, which is the last Fasli year before the date of presenting the plaint. Calculating on the evidence before it, the profits which accrued during that year, the Court of first

instance found that the valuation of the suit as shown by the plaintiff was much below its true valuation, and that a much larger court fee should have been paid. The first Court no doubt does not actually mention the year 1308, but from its tenor and from its remarks it is clear that that was the year the profits of which it considered. Now for the appellant it is contended not that the Court of first instance made a wrong valuation of the profits of 1308. Such a contention as that could not be supported in view of section 12 of the Court Fees Act. The decision of the first Court on that point in such a case would be final. But what the appellant contends is that the decision of the first Court as to the profits of 1308 is absolutely immaterial, and it does not concern him whether that decision is right or wrong. His contention is that the Courts have taken the profits of a wrong year into calculation. The contention as presented by the learned vakil at the hearing of this appeal was that the words "the year next before the date of presenting the plaint" in clause (v)(c) of section 7 of the Court Fees Act must be construed to mean what they say, and that they cannot mean anything other than the year 365 days next before the 16th of July, 1902. The learned vakil referred to the definition of the word "year" in section 3, clause (59) of the General Clauses Act, No. X of 1897, in which it is said that "year" shall mean a year reckoned according to the British Calendar. Now the year, reckoned according to the British Calendar, next before the date of presenting the plaint would be a period of 365 days, the last of which would be 15th July 1902, and cannot, I think, in any way be interpreted to mean a year commencing in September, 1900, and ending in September 1901. In my opinion the contentions of the appellant are correct and must be allowed. I cannot put any meaning upon the word "year" cited above other than the ordinary and natural meaning, that is to say, a period of 365 days, and I cannot construe the words "year next before the date of presenting the plaint" as meaning a year which ended many months before the date. In this view of the case it seems to me that the question of the finality of valuation under section 12 of the Court Fees Act does not arise. The plaintiff admits that if the year 1308 were the year the

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profits of which were to be considered, the valuation put by the Court upon those profits would be final and not open to appeal. But his argument is that that valuation was made in respect of a year other than the year mentioned in clause (v)(c) of section 7 of the Court Fees Act, and therefore that valuation is absolutely immaterial and does not concern him. In this view I concur, and I think, therefore, that both the Courts below have erred on the point of law as to the year the profits of which were to be taken into consideration. Being now of opinion that the profits have been improperly calculated, I must send down an issue upon that point to the lower appellate Court. The issue which I refer is this: what nett profits have arisen from the pre-empted property during the year next before the date of the presentation of the plaint in this suit, that is to say, during 365 days next before the 16th of July 1902? The Court will take all admissible evidence which either party may tender upon this point, and return its finding with the least possible delay. Upon return of the finding ten days will be allowed for objections.

Cause remanded.

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Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

KURA MAL (PLAINTIFF) v. RAM NATH AND ANOTHER (DEFENDANTS)*
Act No. XV of 1877 (Indian Limitation Act), section 5—Limitation—Appeal not presented within time—"Sufficient cause"—Appellant misled by his legal adviser as to course to be followed.

Held, that when a client *bond fide* accepts the advice of counsel as to the proper procedure to adopt in the course of litigation and, misled by that advice fails to file an appeal within time, he is entitled to the benefit of section 5 of the Indian Limitation Act, 1877. *Wazir Ali Khan v. Zainab* (1) followed.

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

Mr. E. A. Howard, for the appellant.

Bubu Sital Prasad Ghosh, for the respondents.

STANLEY, C.J. and BANERJI, J.—This appeal arises out of a refusal by a learned Judge of this court to admit an appeal on the ground that the application was beyond time. The appeal

* Appeal No. 86 of 1906 under section 10 of the Letters Patent.

(1) Weekly Notes, 1903, p. 32.