

1905

JAGAN NATH  
v.  
CHAMPA.

and, therefore, must hold that the plaintiff-respondent, Musamat Champa, not being expressly named as an heir, was not entitled to maintain the suit.

We allow the appeal, set aside the decree of the lower appellate Court, and restore the decree of the Court of first instance dismissing the plaintiff's claim with costs in all Courts.

*Appeal decreed.*

1905  
December 22.

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

RAM TAHAL SINGH (DEPENDANT) v. DUBRI RAI (PLAINTIFF)\*  
*Act No. VII of 1870 (Court Fees Act), section 28—Civil Procedure Code,  
section 54—Suit filed on last day of limitation on an insufficient court  
fee—Limitation.*

When by a mistake of the plaintiff, and not of the Court or of any officer of the Court, a plaint was filed upon an insufficient court fee and this was not discovered until after the period of limitation for the suit had expired it was held that the suit was barred. *Munro v. The Cawnpore Municipal Board* (1), *Muhammad Ahmad v. Muhammad Siraj-ud-din* (2), *Balkaran Rai v. Gobind Nath Tiwari* (3), and *Jagram v. Chatarpal* (4), followed. *Valambal Ammal v. Vythilinga Mudaliar* (5), dissented from.

A SUIT for pre-emption was instituted on the last day allowed by limitation on an insufficient stamp, the insufficiency of the stamp being due to a mistake on the part of the plaintiff himself. The insufficiency of the stamp was not discovered in the Court of first instance (Munsif of Muhammadabad Gohna, Azamgarh), and the plaintiff's claim was decreed.

The lower appellate Court (District Judge of Azamgarh) directed the plaintiff to make good the deficiency (which was done), but eventually came to the conclusion that the suit was barred by limitation as there was no valid plaint within the time allowed by limitation. In second appeal to the High Court the Judgment of the District Judge was reversed on the ground that, in view of section 23 of the Court Fees Act of 1870, any defect due to insufficiency of stamp had been cured. Hence this appeal.

\* Appeal No. 41 of 1905 under section 10 of the Letters Patent.

(1) (1889) 1. L. R., 12 All., 57. (3) (1890) 1. L. R., 12 All., 120.  
(2) (1901) 1. L. R., 23 All., 423. (4) Weekly Notes, 1904, 133.  
(5) (1900) 1. L. R., 24 Mad., 331.

Babu *Surendra Nath Sen*, for the appellants.

Maulvi *Muhammad Ishaq*, for the respondents.

STANLEY, C.J. and BURKITT, J.—The suit which has given rise to this appeal was one for pre-emption, and was instituted on the last day allowed by limitation for the filing of a suit. The plaint was insufficiently stamped, but this insufficiency was not discovered in the Court of first instance. That Court decreed the plaintiff's claim. An appeal was preferred, and at the hearing of the appeal the objection was raised that the plaint was insufficiently stamped, and that, inasmuch as the period allowed by limitation for the presentation of a valid plaint had expired, the suit failed and the appeal must be allowed. The mistake in regard to the stamp was not a mistake of the Court or any officer of the Court. It was a mistake on the part of the plaintiff, attributable to him. The learned District Judge, when his attention was directed to the insufficiency of the stamp, directed the plaintiff to make good the deficiency, and this was done in the course of a week. The hearing of the appeal was then proceeded with, with the result that the learned District Judge came to the conclusion that the suit was barred by limitation, inasmuch as there was no valid plaint upon the files within the time allowed by limitation. A second appeal was preferred to this Court, with the result that the decision of the lower appellate Court was reversed on the ground, as appears by the judgment, that the District Judge, when he directed payment of the deficiency in the court fee, acted under section 28 of the Court Fees Act of 1870, and that, therefore, his direction, which was complied with, validated any defect due to the insufficiency of the stamp on the plaint. We are unable to agree with our learned brother in this view of the question. It has been decided by a Full Bench of this Court in the case of *Balkaran Rai v. Gobind Nath Tiwari* (1) that the mistake or inadvertence referred to in section 28 of the Court Fees Act is a mistake or inadvertence on the part of the Court or its officers. There was no such mistake in this case. Therefore section 28 does not apply. This being so, it appears to us there was clearly no valid plaint upon the file within the time prescribed by limitation

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and the plaintiff's suit, therefore, failed. A similar question to the one before the Court was decided in several recent cases, and amongst others in the cases of *Munro v. The Cawnpore Municipal Board* (1), *Muhammad Ahmad v. Muhammad Siraj-ud-din* (2) and *Jagram v. Chatarpal* (3). The learned Judge of this Court relies upon a decision of the Madras High Court in the case of *Valambal Ammal v. Vythilinga Mudaliar* (4). We may point out, however, that the Madras High Court has not taken the same view of section 28 of the Court Fees Act as was adopted by the Full Bench of this Court. We, therefore, allow the appeal, set aside the decree of the learned Judge of this Court, and restore the decree of the District Judge with costs.

*Appeal decreed.*

[See also *Chatarpal v. Jagram* (5).—ED.]

1906

*January 2.*

## CRIMINAL REFERENCE.

*Before Mr. Justice Banerji.*

EMPEROR v. SALIG RAM.\*

*Act No. XLV of 1860 (Indian Penal Code), section 273—Sale of noxious food—Definition—Sale of grain in bulk in a closed pit.*

Where, as a matter of trade, the owner of a grain pit sold the contents of the pit before it was opened at a certain sum per maund whether the grain was good or bad, and on the pit being opened it was found that a large proportion of the grain was unfit for human consumption, it was held that the vendor could not be convicted under section 273 of the Indian Penal Code.

In this case one Rabi Dat, a dealer in grain, and his Muhib, Salig Ram, sold the contents of a closed grain pit to one Jhunna Lal. The agreement was that Rs. 3 per maund should be paid for the grain, in whatever condition it was found when the pit was opened. On opening the pit and taking the grain out to weigh it, it was found that a considerable proportion of it was bad and unfit for human consumption. Both the dealer and his

\* Criminal Reference No. 674 of 1905.

(1) (1889) I. L. R., 12 All., 57.

(3) Weekly Notes, 1904, p. 133.

(2) (1901) I. L. R., 23 All., 423.

(4) (1900) I. L. R., 24 Mad., 331.

(5) (1904) I. L. R., 27 All., 411.