

1905  
June 8.

*Before Mr. Justice Banerji and Mr. Justice Richards.*  
SURAJ BALI PRASAD (DEFENDANT) v. H. E. THOMAS AND ANOTHER  
(PLAINTIFFS).\*

*Act No. III of 1877 (Indian Registration Act), section 77—Suit to compel registration—Limitation—Act No. XV of 1877 (Indian Limitation Act), sections 5 and 6.*

*Held* that section 5 of the Indian Limitation Act, 1877, applies to a suit brought under section 77 of the Indian Registration Act, 1877, to compel registration of a document. *Beni Prasad Kuari v. Dharaka Rai* (1) followed.

THE plaintiffs in this case alleged that on the 7th of March 1902 the defendants Suraj Bali Prasad and his wife Musammat Shiam Lali had executed in their favour a deed of sale of certain zamindari property for a consideration of Rs. 2,000, part of which had been paid. On the vendors exhibiting reluctance to get the sale deed registered, they, the plaintiffs, had under section 36 of the Registration Act filed the sale deed with process fee in the office of the Sub-Registrar on the 3rd of May 1902. The defendants nevertheless did not attend to get the deed registered, and on the 10th of July 1902 the Sub-Registrar refused to register the deed. Thereupon on the 30th of July 1902 the plaintiffs applied to the Registrar for registration of their sale deed, but this application was rejected on the 5th of September 1902. The plaintiffs accordingly instituted the present suit on the 5th of November 1902, praying for registration of the document as against the two alleged executants. The defendants denied execution, stating that the sale deed was a pure fabrication on the part of the plaintiffs, and also pleaded that the suit was barred by limitation. The Court of first instance (Subordinate Judge of Gorakhpur) dismissed the suit, holding that the plaintiffs had failed to prove execution. On appeal the lower appellate Court (District Judge of Gorakhpur) affirmed the lower Court's decree with regard to the female defendant Shiam Lali, but decreed the plaintiffs' suit as against Suraj Bali Prasad. Suraj Bali Prasad appealed to the High Court.

---

\* Second Appeal No. 936 of 1903, from a decree of W. Tudball, Esq., District Judge of Gorakhpur, dated the 1st of June 1903, reversing a decree of Munshi Achal Behari, Subordinate Judge of Gorakhpur, dated the 16th of February 1903.

Mr. *Agarwala*, for the appellant.

The Hon'ble Pandit *Sundar Lal*, for the respondents.

BANERJI and RICHARDS, JJ.—This appeal arises out of a suit brought under section 77 of the Indian Registration Act for a decree directing a sale deed executed by the defendant appellant in favour of the respondents to be registered. Two pleas have been urged in the appeal before us. The first is that the procedure prescribed by the Registration Act had not been followed by the plaintiffs before the present suit was brought, and that consequently the suit was not maintainable. The second plea is that the suit is barred by limitation. As regards the first plea, it is entirely without force. The Sub-Registrar for some reason or other refused to register the sale deed. The plaintiffs thereupon appealed to the District Registrar. The application made to the District Registrar was either an appeal under section 72 or an application under section 73, and the order of the District Registrar refusing registration was made either under section 72 or under section 76. It professed to have been made under section 72, so that it cannot be said that the preliminary procedure required before a suit could be brought under section 77 was not adopted. As regards the plea of limitation the contention is this. The order of the Registrar refusing registration was made on the 5th of September 1902. The present suit was brought on the 5th of November of that year. The period of limitation prescribed for such a suit by section 77 being 30 days, it is urged that the suit was beyond time. It appears, however, that the Court was closed from 5th October to 4th November 1902, both days inclusive, and the suit was filed on the day the Court reopened. Consequently, having regard to the provisions of section 5 of the Limitation Act, the suit was not beyond time. This question was considered in *Beni Prasad Kuari v. Dharaka Rai* (1) and the principle of the ruling in that case fully applies to this case. The appeal therefore fails and is dismissed with costs.

*Appeal dismissed.*

(1) (1901) I. L. R., 23 All., 277.

1905

SURAJ BALI  
PRASAD

v.  
H. E.  
THOMAS.