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SINGH
v.
MUL CHAND.

may be liable for the decree. To this extent I would allow the appeal. I would direct that the parties pay and receive costs in proportion to their failure and success.

By THE COURT.—The order of the Court is that the decree of the Court below be set aside and that the appeal be allowed to this extent, namely, that a decree be passed in favour of the plaintiffs for Rs. 40,000, together with Rs. 3,280 interest, up to the date of the institution of the suit, thereafter interest up to the date of realization at the rate of 6 per cent. per annum. This decree will not be against the present respondents personally, but will be realized from such property of Mul Chand as may be in their hands and as may be liable for the decree. *Quoad ultra* the appeal is dismissed. The parties will pay and receive costs in both Courts in proportion to their failure and success.

Decree modified.

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May 18.

Before Mr. Justice Aikman.

ANJORA KUNWAR (DEFENDANT) v. BABU AND ANOTHER (PLAINTIFFS)*
Act No. XV of 1877 (Indian Limitation Act), sections 5 and 14—Limitation—Appeal—Delay in filing appeal due to appellant bonâ fide accepting erroneous legal advice.

Where a client *bonâ 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. *Balwant Singh v. Gumari Ram* (1), *Brij Mohan Das v. Mannu Bibi* (2) and *Kura Mal v. Ram Nath* (3) followed. *In re Coles and Ravenshaw* (4) referred to.

THIS was a suit to eject the defendant, a *parda nishin* lady, from an agricultural holding. A question of proprietary title was raised in and decided by the Court of first instance (an Assistant Collector of Allahabad). Acting on the advice of his pleader, the appellant's agent filed an appeal against the decision of the Assistant Collector in the Court of the Commissioner. On the 3rd of April 1905 the Commissioner returned the appeal for presentation to the proper Court, holding that the appeal lay to

* Second Appeal No. 617 of 1905, from a decree of W. J. D. Burkitt, Esq., District Judge of Allahabad, dated the 12th of April 1905, confirming a decree of Rai Bahadur Munshi Ganga Sahai, Assistant Collector of Allahabad, dated the 5th of August 1904.

(1) (1888) I. L. R., 5 All., 591.
(2) (1897) I. L. R., 19 All., 348.

(3) (1906) I. L. R., 28 All., 414.
(4) (1907) 1 K.B., 1.

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the District Judge. The appeal was presented on the same day to the District Judge, but he rejected it as time-barred, refusing to consider what had occurred as sufficient cause for admitting the appeal under the provisions of section 5 of the Indian Limitation Act, 1877. The defendant thereupon appealed to the High Court.

Babu *Lalit Mohan Banerji*, for the appellant.

Babu *Jogindro Nath Chaudhri*, (for whom Babu *Surat Chandra Chaudhri*), for the respondents.

AIKMAN, J.—The plaintiffs respondents sued to eject the appellant, a *parda nishin* lady, from a certain agricultural holding. A question of proprietary title was raised and decided by the Assistant Collector. Acting on the advice of his pleader the appellant's agent filed an appeal against the decision of the Assistant Collector in the Court of the Commissioner. On the 3rd of April 1905, the Commissioner returned the appeal for presentation to the proper Court, holding that the appeal lay to the District Judge. The appeal was presented the same day to the District Judge. The District Judge rejected the appeal, refusing to consider what had occurred as sufficient cause for admitting the appeal under the provisions of section 5 of the Limitation Act. Against that order the defendant has preferred this appeal. The case has been very ably argued before me by the learned vakils on both sides, who have cited all the authorities bearing on the point. No doubt in England erroneous advice on the part of a legal adviser has recently been held not to be a sufficient ground for admitting an appeal after due date (see *In re Coles and Ravenshaw* (1)); but, as I take it, the law in India is not so strict. Section 14 of the Limitation Act provides that in computing the period of limitation for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal against a defendant, shall be excluded where the proceeding is founded upon the cause of action and has been prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature is unable to entertain it. A Full Bench of this Court has held that that section applies

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to a case where a plaintiff has been prosecuting his suit in a wrong Court in consequence of a *bond fide* mistake of law—see *Brij Mohan Das v. Mannu Bibi* (1). It is true that section 14 applies only to suits and not to appeals. But it has been held by this Court—see *Balwant Singh v. Gumani Ram* (2) that the circumstances contemplated in section 14 might, and ordinarily would, constitute a sufficient cause in the sense of section 5, and the reason why section 14 is limited to Courts of original jurisdiction is merely because the earlier section had given a larger and more unfettered power in the same behalf to appellate Courts. In the case of *Kura Mal v. Ram Nath* (3) it was 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 Limitation Act. Following these rulings I have no hesitation in ruling that in the exercise of proper discretion the District Judge ought to have admitted the appeal under section 5 of the Limitation Act. I set aside his order and remand the case to him under the provisions of section 562 of the Code of Civil Procedure. I direct him to readmit the appeal under its original number in the register and proceed to dispose of it on the merits. I make no order as to the costs of this appeal.

Appeal decreed and cause remanded.

Before Sir George Knox, Acting Chief Justice, and Mr. Justices Dillon.

MUZAFFAR ALI KHAN AND OTHERS (PLAINTIFFS) v. PARBATI AND

ANOTHER (DEFENDANTS).*

Muhammadian Law—Shias—Succession—Childless widow—Rights of widow in possession in lieu of dower—Act No. IV of 1882 (Transfer of Property Act, section 6 (d))—Mortgage—Adverse possession.

Under the Imamia law a widow, if she has no issue alive at her husband's death, does not inherit any of her husband's immovable property.

A Muhammadan widow in possession of immovable property of her deceased husband in lieu of her dower has only a lien on the property to secure payment of the dower debt; she has no transferable interest in the property.

* First Appeal No. 222 of 1904, from a decree of Babu Madho Das, Subordinate Judge of Saharanpur, dated the 14th of July 1904.

(1) (1897) I. L. R., 19 All., 348. (2) (1888) I. L. R., 5 All., 591.
(3) (1906) I. L. R., 28 All., 414.

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June 13.