

1906

MUNSHI
v.
DAULAT.

much of it still remains subject to the mortgage of the 10th of July 1843 in the pleadings mentioned?

- (2) What portion or share of the mortgaged property belongs to the plaintiffs and what proportion of the mortgage-debt is chargeable against that portion or share, regard being had to the provisions of section 82 of the Transfer of Property Act?

We remand these issues to the lower appellate Court under the provisions of section 566 of the Code of Civil Procedure, and direct the Court to take such additional evidence as may be requisite. On return of the findings the parties will have the usual ten days for filing objections.

Issues remitted.

1907

January 3.

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

RAM KISHAN SHASTARI (PLAINTIFF) v. KASHI BAI (DEFENDANT).^{*}
Act No. XV of 1877 (Indian Limitation Act), section 12—Limitation—
“Time requisite for obtaining a copy.”

The words ‘the time requisite for obtaining a copy’ in the second and third paragraphs of section 12 of the Indian Limitation Act, 1877, are not confined to cases where the person appealing has in person or by a properly authorized agent applied for a copy of a judgment or decree. *Ramamurthi Aiyar v. Subramania Aiyar* (1) dissented from.

THIS was an appeal under section 10 of the Letters Patent of the Court from a judgment of Knox, J. The facts of the case are set forth in that judgment, which was as follows:—

KNOX, J.—The sole question which has to be considered in this second appeal is whether the words used in section 12 of the Limitation Act No. XV of 1877, namely, ‘the time requisite for obtaining a copy of the judgment on which the decree appealed against is founded’ and the similar words in the preceding paragraph, namely, ‘the time requisite for obtaining a copy of the decree appealed against,’ refer only to cases in which the person appealing has in person or by a properly authorized agent applied for the copy of the judgment or decree. The date of the decree is the 30th June 1904. The defendant

^{*}Appeal No. 50 of 1906 under section 10 of the Letters Patent.

(1) (1902) 12 Mad., L. J., 385.

1907

RAM KISHAN
SHASTRI
v.
KASHI DAT.

apparently left it to her vakil to obtain a copy of the decree and of the judgment. It may fairly be inferred that her object in obtaining the copy of the judgment and decree was, as the lower appellate Court has found, to consider whether an appeal should or should not be filed. The appellant's vakil left the matter in the hands of his clerk, who applied for a copy of the decree and judgment on the 5th of July, 1904. The copies applied for were not prepared until the 18th of July 1904. The real reason for the delay was, not that ostensibly given by the copying department, but, as the learned Judge points out, the fact that the decree was not drawn up until the 16th of July. Notice of the copies being ready was posted on the 18th July. It is allowed, and properly allowed, that if the application had been made by the appellant herself or by her vakil or by some recognised agent, she would have been entitled to the whole of the 14 days that were requisite in this case for obtaining the copies of the decree and judgment. The lower appellate Court has, however, refused to grant any portion of this time, holding that the appellant is only entitled to get the benefit of the time taken in preparing the copy of the decree, when the copy is applied for by herself or on her behalf and with the intention of appealing. This view taken by the learned Judge is attacked in this appeal before me. In support of it the learned vakil for the respondent has called my attention to a case which is to be found in 12 Madras, L. J., p. 385, *Ramamurthi Aiyar v. Subramania Aiyar*. The view taken by the lower appellate Court is undoubtedly supported by the ruling cited above, but the judgment in that case is one which assigns no reason of any kind whatever for the opinion expressed therein and with all due deference to the learned Judges who decided that case, I am not prepared to read into section 12 of Act No. XV of 1877, the words 'when the copy is applied for by the party appealing or on his behalf and with the intention of appealing.' The Limitation Act is an Act which takes away existing rights, and the language of such an Act should be very carefully construed. In the present case it would be inconsistent with the language of the section to hold that because the appellant left this matter to her vakil and the vakil left it to his clerk she is to be deprived of the time which she would otherwise have got

1907

RAM KISHAN
SHASTARI
v.
KASHI BAI.

if she had signed the application herself and handed it over to the same clerk for presentation to the Munsarim. Indeed the danger of holding this view is in the present case accentuated by the fact that the decree was not ready until the 16th of July, and the lady would have had only 14 days instead of 30 days, if the time occupied in preparation of the decree be not allowed to her. The appeal therefore prevails. I set aside the decree of the lower appellate Court upon this preliminary point, and remand the case under section 562 of the Code of Civil Procedure, to that Court with directions to re-admit the appeal to its original number of pending appeals in the register, and to dispose of it according to law. Costs will follow the event.

On this appeal:—

Dr. *Tej Bahadur Sapru*, for the appellant.

The respondent was not represented.

STANLEY, C. J., and BURKITT, J.—We agree with the learned Judge of this Court in the conclusion at which he arrived. We think it would be unduly restricting the language of section 12 of the Limitation Act if we were to hold, as did the lower Court, that the application for a copy of the judgment must necessarily be by the appellant or somebody proved to have been acting in the matter as her agent. The language of section 12 is very general. It provides that the time requisite for obtaining a copy of the decree shall be excluded in the computation of time. The section does not say by whom the copy is to be obtained, nor does it introduce the words which have been suggested as necessarily embodied in the section, showing that the copy must be obtained for the purposes of an appeal. We dismiss the appeal with costs.

Appeal dismissed.