

1913

RAGHUBIR
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v.
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SINGH.

intention is clearly manifest if we refer to the judgement. The amount, therefore, at which the appellants ought to have valued their cross objections, as they did in the court below, was Rs. 632-12-11, and court fees ought to have been paid upon that amount. This would come to Rs 48, and as Rs. 11-4-0 was paid, there was a deficiency of Rs. 36-12-0. We allow the appellants two weeks to make good this deficiency.

APPELLATE CIVIL.

1913

November, 22.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

MUHAMMAD ALI KHAN AND OTHERS (PLAINTIFFS) v. JAS RAM AND OTHERS (DEFENDANTS)*

Civil Procedure Code (1908), order XLI, rule 10—Appeal—Vakalatnama—Appeal presented by vakil whose vakalatnama was in fact defective.

Where, by an oversight, the name of a vakil[†] who had filed an appeal was omitted from the body of his vakalatnama, it was *held*, on objection taken by the respondents, that the document was invalid and the appeal consequently had not been properly presented. The force of this objection to the validity of the appeal was not lessened by the fact that it was raised at a very late stage of the proceedings, in fact after two orders of remand had been made by the court of first appeal.

THIS was an appeal under section 10 of the Letters Patent from the judgement of a single Judge of the Court. The facts of the case appear from the judgement under appeal, which was as follows :—

“ The plaintiffs appellants brought a suit in the court of the Munsif of Bulandshahr for possession of certain *abadi* land. The claim was decided against them and an appeal was filed on their behalf in the court of the District Judge of Aligarh on the 10th of July, 1911. The appeal was filed by one Munshi Abdul Salam Khan, vakil, who at the same time filed his vakalatnama also. The case was heard by the Additional Judge who remanded it to the lower court for the trial of certain issues. The remand order was made on the 4th of August, 1911. The Munsif returned the case with his findings on the 28th of November, 1911. The parties filed cross objections on the 13th and 19th of December, 1911. The case was again remanded on the 22nd of January, 1912. The Munsif submitted his second finding on the 2nd of March, 1912. On the 13th of April, 1912, the respondent filed objections to the finding submitted by the Munsif. Munshi Abdul Salam Khan died prior to the submission of the first finding by the learned Munsif. The appeal was heard on the 1st of July, 1912, when a preliminary objection was taken to the effect that the memorandum of appeal had not

* Appeal No. 60 of 1913 under section 10 of the Letters Patent.

been properly presented to the court of the District Judge, inasmuch as the name of Abdul Salam Khan was not mentioned in the body of the vakalatnama. The learned Additional Judge accepted the preliminary objection and dismissed the appeal. The plaintiffs appellants have come up in second appeal to this Court. It is contended on their behalf that the omission of the name of vakil in the body of the vakalatnama was due to an oversight, and that, considering that the objection was taken by the respondent at a very late stage, it should not have been given effect to. There can be no doubt that the omission of the name of Abdul Salam Khan from the body of the vakalatnama must have been due to an oversight. But the question is whether such a mistake can be condoned and the appeal can be considered as properly presented. The case of *Pokhpal Singh v. Dambar Singh* (1) is against the contention for the appellants. It was held in that case that a pleader whose name was omitted in the body of the vakalatnama was not duly appointed and that an appeal presented by him was not properly presented. If Munshi Abdul Salam was not duly appointed by the plaintiffs appellants and if the appeal filed by him was not properly presented, the facts that the objection was not taken till a very late stage in the case would not validate the presentation of the appeal. The appeal therefore fails and is dismissed, but considering the special circumstances of the case I make no order as to costs."

On this appeal :—

Mr. *Sham Nath Mushran* (with him The Hon'ble Dr. *Tej Bahadur Sapru* and Munshi *Iswar Saran*), submitted that the case of *Pokhpal Singh v. Dambar Singh*, (1) relied on by the lower appellate court was distinguishable. In that case objections were taken at the first opportunity. The name of the pleader, though not written in the body of the vakalatnamah, was to be found on the reverse of it, just above the place where the pleader had signed acceptance. Moreover certificate and affidavit of the payment of fee were also filed, and both things put together showed that the pleader was appointed to file the appeal.

Mr. *A. H. C. Hamilton* (with him Dr. *Satish Chandra Banerji*), was not heard in reply.

RICHARDS, C. J. and BANERJI J.—We are unable to hold that the view taken by the learned Judge of this Court was wrong. We accordingly dismiss the appeal, but without costs.

Appeal dismissed.

(1) (1909) 6 A. L. J. (Notes), 110.

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ALI KHAN
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