

That point is *res judicata* between the parties, having been determined by the ultimate court of competent jurisdiction. The plaintiff's case is that events have taken place since then which have put an end to the tenancy, and that the defendants have re-entered into possession of the land in suit as trespassers pure and simple. It has to be determined, on the one hand, what is the legal effect of the failure of the defendants to obtain within the prescribed period of limitation the benefit of the Board of Revenue's decision in their favour; and, on the other hand, the provisions of section 13 of the Tenancy Act, and their application to the facts of the present case, require to be considered. These, however, are points reserved by the Legislature for the decision of the Revenue Courts. The question must go to those courts for determination, whether the events which have occurred since the original suit for ejectment was instituted have or have not extinguished the tenancy which the Board of Revenue found to exist. We are satisfied that the order of the lower appellate court was right and the direction given by it correct. We therefore dismiss this appeal. Under the circumstances we order that costs of this appeal be costs in the cause.

Appeal dismissed.

Before Mr. Justice Piggott and Mr. Justice Lindsay.

SANTI LAL (JUDGEMENT-DEBTOR) v. THE INDIAN EXCHANGE BANK,
(DECREE-HOLDER) *

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May, 31.

Act No. VI of 1882 (Indian Companies Act), section 169—Civil Procedure Code, 1908, order XXI, rules 58 and 63—Appeal.

The right of appeal under the provisions of section 169 of Act No. VI of 1882, is co-extensive with the right of appeal conferred by the Code of Civil Procedure.

In the liquidation proceeding of the Indian Exchange Bank a certain person described as the proprietor of the firm was directed by the Additional Judge of Lahore to pay a certain sum as contributory. This order was sent to the District Judge of Agra for execution, when another person put in an objection to the effect that he was the sole proprietor of the firm. The District Judge declined to consider this objection.

Held, that no appeal lay from the Judge's order, inasmuch as it was under order XXI, rule 36, the objection being under order XXI, rule 58.

* First Appeal No. 38 of 1916, from an order of D. R. Lyle, District Judge of Agra, dated the 8th of January, 1916.

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THE facts of this case were as follows :—

Liquidation proceedings in the matter of the Indian Exchange Bank were pending in the Court of the Additional Judge of Lahore under the old Companies Act (Act VI of 1882). The Additional Judge of Lahore passed an order directing one Lachmi Narain as a contributor to pay a sum of Rs. 2,475 towards the funds of the Bank in liquidation. This order was sent down to be executed in the court of the District Judge of Agra. In the liquidation proceedings, and in the order which was issued from the court at Lahore, Lachmi Narain was described as being the proprietor of a firm styled Nand Lal Santi Lal. Certain goods were attached by the District Judge of Agra in execution of the order received by him and on this having been done the present appellant Santi Lal filed an objection, in which he stated that he and not Lachmi Narain was the sole proprietor of the firm in question. The learned District Judge was of opinion that he had no power to entertain a petition of this kind. The order was issued from the Lahore court with an express statement that Lachmi Narain was proprietor of the firm. The Judge therefore refrained from inquiry as to whether Santi Lal was or was not the proprietor of the firm.

Santi Lal appealed to the High Court from the order of the District Judge declining to inquire into his rights. A preliminary objection was taken by the respondent firm that no appeal lay from the Judge's order. The objection prevailed.

Munshi *Damodar Das*, for the appellant.

Babu *Girdhari Lal Agarwala* and The Hon'ble Munshi *Narayan Prasad Ashthana*, for the respondent.

PIGGOTT and LINDSAY, JJ. :—This is a first appeal against an order of the District Judge of Agra passed under the following circumstances. It appears that liquidation proceedings in the matter of the Indian Exchange Bank were pending in the court of the Additional Judge of Lahore under the old Companies Act (Act VI of 1882). The Additional Judge of Lahore passed an order directing one Lachmi Narain as a contributory to pay a sum of Rs. 2,475 towards the funds of the Bank in liquidation. This order was sent down to be executed in the court of the District Judge of Agra. In the liquidation proceedings and in the order which

was issued from the court at Lahore, Lachmi Narain was described as being the proprietor of a firm styled Nand Lal Santi Lal. Certain goods were attached by the District Judge of Agra in execution of the order received by him, and on this having been done the present appellant Santi Lal filed an objection in which he stated that he and not Lachmi Narain was the sole proprietor of the firm in question. The learned District Judge was of opinion that he had no power to entertain a petition of this kind. The order was issued from the Lahore court with an express statement that Lachmi Narain was proprietor of the firm. The Judge therefore refrained from inquiry as to whether Santi Lal was or was not the proprietor of the firm.

We may note here that the petition of objection which was filed by Santi Lal purported to be under order XXI, rule 58, of the Code of Civil Procedure, and that being so the order passed by the learned District Judge must be taken to be an order under order XXI, rule 63. A preliminary objection has been raised that no appeal lies, and we think that the objection must prevail. If the order of the Agra Court is treated as having been made under rule 63 of order XXI the matter is clear enough.

The only remedy of a person whose objection has been dismissed is by bringing a suit for a declaration. Moreover, it is clear that an order of this kind is not appealable under order XLIII of the Code of Civil Procedure. The learned vakil for the appellant has drawn our attention to the provisions of sections 166, 167 and 169 of the Companies Act, VI of 1882. He relies upon the provisions of section 169, for the purpose of showing that an appeal lies in the present case. But we are unable to entertain this argument. It appears to us that section 169 of the Companies Act (Act VI of 1882), merely provides for a right of appeal in the case of orders which would have been appealable had they been passed by the court in the exercise of its ordinary jurisdiction. This brings us back again to the provisions of the Code of Civil Procedure, which regulates cases in which appeals from orders in Civil Courts lie. It appears to us quite clear therefore that the right of appeal under the provisions of section 169 of the old Companies Act, is co-extensive with the right of appeal conferred by the Code

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of Civil Procedure ; and, as we have already mentioned, an appeal in a case of this sort would not lie under the Code. We are satisfied that the preliminary objection is sound and must prevail. We dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Piggott and Mr. Justice Lindsay.

KHIALI RAM (DEPONDANT) v. TAIK RAM AND OTHERS (PLAINTIFFS)
AND PARSOTAM AND ANOTHER (DEFENDANTS) *

—Redemption—Burden of proof—One mortgagor redeeming the entire mortgage—Acknowledgement—*Dakhalnama*—Act IX of 1908 (*Indian Limitation Act*), section 19, schedule I, article 148.

In a suit by the representatives of some of the co-mortgagors for the redemption of their shares in certain property against the representatives of a co-mortgagor, who had redeemed the mortgage, the plaintiffs alleged that the mortgage had been made by one Sukhjit in favour of one Muhammad Husain in the year 1913 Sambat. The plaintiffs also relied on certain acknowledgements made by the defendant's predecessor in title. One of these was a *dakhalnama* executed by Ram Lal in 1890 which contained a description of the property and was signed by Ram Lal. The defendant contended that there was no mortgage; that he was absolute owner; that the acknowledgements had not been proved, and that the suit was time-barred. It was held by the lower appellate court that the date of the mortgage had not been proved, but the acknowledgements were in respect of some mortgage and that the plaintiffs were entitled to redeem.

Held that the rule of limitation governing a suit of this kind was that laid down in *Ashfaq Ahmad v. Wazir Ali*, (1) viz. that article 148 of Schedule I to the Limitation Act applied, that is, the limitation extended for a period of 60 years from the date of execution of the mortgage or from the date when the mortgage money became due, and the burden was upon the plaintiffs of proving the mortgage that they had set up, and that it was for them to prove that the acknowledgement relied upon by them as contained in the *dakhalnama* had been made at a date within the period of limitation.

Held further, that the acknowledgement contained in the *dakhalnama* amounted to nothing more than a description of the property purchased and was not an acknowledgement of liability within the meaning of section 19 of the Limitation Act. *Dharma Vithal v. Govind Sadvalkar* (2) referred to.

THE plaintiffs alleged that their ancestor Sukhjit had executed a usufructuary mortgage for Rs. 200 in Sambat 1913, corresponding to 1856 A. D.; that Manik, one of the five sons of Sukjit, redeemed the whole mortgage in 1871 or thereabouts, becoming

* First Appeal No. 12 of 1916, from an order of Abdul Ali, Subordinate Judge of Agra, dated the 10th of December, 1915.

(1) (1889) I. L. R., 11 All., 423.

(2) (1883) I. L. R., 8 Bom., 99.

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