

had to be brought within six months from the date of the decree and the applicant was not at liberty to exclude any time for the purpose of obtaining a copy of the decree. Under the old Act this time was only allowed to applications for leave to appeal as a pauper; but the clause of the section, as it now stands, is general and appears to apply to all applications for leave to appeal. It is highly probable that the words "leave to appeal as pauper" were omitted so as to include applications for leave to appeal in insolvency matters. But in construing the section we must deal with the section as it now stands. On the plain words of the section an applicant for leave to appeal is entitled to exclude the period referred to. In our opinion the application is within time.

The value of the subject matter of the suit in the court below and of the proposed appeal to His Majesty in Council is upwards of Rs. 10,000. This Court did not affirm the decision of the court of first instance. The case accordingly fulfils the requirements of section 110 of the Code of Civil Procedure and we so certify. We make no order as to costs.

Application granted.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Muhammad Rafiq
 HAR NARAIN AND ANOTHER (DEFENDANTS) v. BISHAMBHAR NATH
 AND ANOTHER (PLAINTIFFS).*

1915

 RAM SARUP
 v.
 JASWANT
 RAI.

1915
 November, 22.

Hindu law—Mitakshara—Partition—Share of step-mother.

Under the Mitakshara law a step-mother is entitled, upon partition of the joint family property, to share equal to that of a son. *Hemangini Dasi v. Kedarnath Kundu Chowdhry* (1) distinguished. *Mathura Prasad v. Deoka* (2) followed.

THIS was a suit for partition of joint family property. The family consisted of the plaintiff, his half brother defendant No. 1 and his mother defendant No. 2. The only question material to this report which was raised in the case was whether the second defendant was entitled to a separate share equal to that of the sons, or whether she was only entitled to a half share of her own son's share, that is, whether the property ought to be divided into three shares or two. The court passed a decree in favour of the

* First Appeal No. 283 of 1913, from a decree of Shekhar Nath Banerji, Subordinate Judge of Agra, dated the 24th of June, 1913.

(1) (1889) I.-L. R., 16 Cal., 758.

(2) Weekly Notes, 1890, p. 124.

1915

HAR NARAIN
v.
BISHAMBHAR
NATH.

plaintiff dividing the property in three shares one of which was allotted to the mother of the plaintiff. The defendant objected to this part of the decree in appeal.

Munshi *Benode Behari*, for the appellants, submitted that the second defendant being a step-mother of the first defendant was not entitled to a share on partition. It was really giving the plaintiff two shares instead of one. The Mitakshara gave a share only to the mother; Mitakshara I, vii, CXXIII A. If a share was to be allotted to the mother of the plaintiff it should come out of the plaintiff's share. The Privy Council did that in *Hemangini Dasi v. Kedarnath Kundu Chowdhry* (1).

Pandit *Shiam Krishna Dar*, for the respondent, argued that so far as the Benares School was concerned the step-mother was entitled to a share; *Mathura Prasad v. Deoka* (2). The Calcutta case was a case under the Bengal law; see *Chowdhry Thakur Prasad Shahi v. Bhagbati Koer* (3).

He also discussed *Damodardas Maneklal v. Uttamram Maneklal* (4) and *Damoodur Misser v. Senabutty Misrain* (5).

RICHARDS, C. J., and MUHAMMAD RAFIQ, J.:—This appeal is connected with First Appeal No. 355 of 1914. It is a suit for partition brought by Bishambhar Nath and Musammat Chiraunji against Har Narain and his son Amba Prasad. Bishambhar Nath is the brother of Har Narain. Musammat Chiraunji is the mother of Bishambhar Nath and step-mother of Har Narain. The only point which arises in the appeal is the share to which Musammat Chiraunji is entitled upon partition. The defendants contend that she is only entitled to a share out of the share allotted, on partition, to her son. On the other hand, the plaintiffs contend that the property must be divided into three parts, one part should be allotted to Bishambhar Nath, one part to Musammat Chiraunji and a third part to Har Narain. The court below has acceded to the contention of the plaintiffs. The defendants have appealed. Reliance was placed on the case of *Hemangini Dasi v. Kedarnath Kundu Chowdhry* (1). This no doubt would be an authority in the appellant's favour if the present was not a case

(1) (1889) I. L. R., 16 Calc., 758.

(3) (1905) I. C. L. J., 142.

(2) Weekly Notes, 1890, p. 124.

(4) (1892) I. L. R., 17 Bom., 271

(5) (1882) I. L. R., 8 Calc., 537.

governed by the Benares School of Law (i.e. Mitakshara), but it is quite clear that the case cited was one under the Bengal School of law, namely, the Dayabhaga. This appears from the judgement in the case of *Chowdhry Thakur Prasad Shahi v. Bhagwati Koer* (1). On the other hand, there are several authorities in favour of the plaintiff which refer to the Mitakshara School of law, see *Damoodur Misser v. Senabuttly Misra* (2); *Damodardas Manehlal v. Uttamram Manehlal* (3). The same point was expressly decided by this Court in the case of *Mathura Prasad v. Deoka* (4). In our opinion the view taken by the court below was correct and should be affirmed. We dismiss the appeal with costs.

1915

HAR NARAIN
v.
BISHAMBHAR
NATH

Appeal dismissed.

1915

November, 29.

Before Mr. Justice Tudball and Mr. Justice Piggott.

RAM UGRAH PANDE AND OTHERS (PLAINTIFFS) v. ACHRAJ NATH
PANDE AND OTHERS (DEFENDANTS).*

Civil Procedure Code (1908), schedule II, clauses 17 and 20—Award—Application to file an award on reference made out of court—Proceedings in court continued—Limitation—Act No. IX of 1908 (Indian Limitation Act), sections 5 and 14; schedule I, article 178.

Pending proceedings for mutation of names the parties concerned referred to arbitration out of Court the whole question of their title to the property in dispute, and the arbitrator delivered his award. The mutation proceedings were nevertheless continued. More than six months after the date of the award, some of the parties filed an application in the Civil Court purporting to be under clause 17 of the second schedule to the Code of Civil Procedure, and subsequently an amended application under clause 20.

Held that the application was time-barred. Clause 17 of the second schedule to the Code of Civil Procedure was totally inapplicable, and neither section 5 nor section 14 of the Indian Limitation Act, 1908, could be applied in favour of the amended application under clause 20.

THE facts of the case sufficiently appear from the judgement of the Court and briefly stated, they are as follows :—

One Prag Dat Pande had five sons. On the death of Prag Dat Pande the whole of the property recorded in his name was

* First Appeal No. 99 of 1915, from an order of Muhammad Shafi, Second Additional Subordinate Judge of Basti, dated the 2nd of February, 1915.

(1) (1905) I C. L. J., 142 (143). (3) (1892) I. L. R., 17 Bom., 271
(2) (1882) I. L. R., 8 Calc., 537 (542). (4) Weekly Notes, 1890, p. 124.