

1915

SITAL PRASAD
v.
LAL
BAHADUR.

it seriously urged that we should do so. We dismiss the appeal with costs.

Appeal dismissed.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Muhammad Rafiq.

RAM SARUP AND OTHERS (DEFENDANTS) v. JASWANT RAI AND OTHERS
(PLAINTIFFS).*

1915
November, 26.

Act No. IX of 1908 (Indian Limitation Act), section 12; schedule I, article 179—Limitation—Application for leave to appeal to His Majesty in Council—Exclusion of time requisite for obtaining a copy of the decree.

Held that section 12 of the Indian Limitation Act, 1908, applies to applications for leave to appeal to His Majesty in Council. The appellant is therefore entitled to exclude the day upon which the judgement complained of was pronounced and the time requisite for obtaining a copy of the decree from the period of limitation prescribed.

THIS was an application for leave to appeal to His Majesty in Council against a decree of the High Court. A preliminary objection was taken that the application was beyond time, which resolved itself into the question whether the applicant was entitled to exclude from the period of limitation the time requisite for obtaining a copy of the decree from which the applicant sought leave to appeal.

Munshi *Gulzari Lal* and Pandit *Kailas Nath Katju*, for the appellants.

Munshi *Benode Behari*, for the respondents.

RICHARDS, C. J., and MUHAMMAD RAFIQ, J. :—This is an application for leave to appeal to His Majesty in Council. A point has been taken on behalf of the respondent that the application was not presented within time. Article 179 of the Limitation Act prescribes a period of limitation of six months from the date of the decree. Section 12, clause 2, of the Limitation Act now in force provides that in computing the period of limitation prescribed for an application “for leave to appeal” the day on which the judgement complained of was pronounced and the time requisite for obtaining a copy of the decree shall be excluded. It is admitted that if this provision applies to an application for leave to appeal to His Majesty in Council the application is within time. Prior to the passing of the present Limitation Act, appeals to His Majesty

* Privy Council Appeal No. 19 of 1915.

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.