

Before Mr. Justice Prinsep and Mr. Justice Banerjee.

1892
May 10.

MOTI SAHU AND ANOTHER (PLAINTIFFS) v. CHHATRI DAS AND
OTHERS (DEFENDANTS).*

Limitation—Plaint insufficiently stamped—Practice—Date of institution of suit—Presentation of plaint insufficiently stamped—Court-fees, payment of requisite, on a date subsequent to that on which plaint was presented, effect of, on period of limitation.

The date of the institution of a suit should be reckoned from the date of the presentation of the plaint, and not from that on which the requisite Court-fees are subsequently put in, so as to make it admissible as a plaint.

Skinner v. Orde (1) and *Chennappa v. Raghunatha* (2) referred to. *Balkaran Rai v. Gobind Nath Tiwari* (3) not followed.

THE question raised in this appeal was, whether a suit had been properly dismissed as barred by limitation, on the ground that the plaint had not been properly stamped within the period prescribed by the Limitation Act.

The suit was instituted by the plaintiffs to set aside an order under section 281 of the Civil Procedure Code, passed on the 11th May 1889, disallowing their claim for declaration of their title and for possession. In the plaint the 11th May 1889 was fixed as the date when the plaintiffs' cause of action accrued. The plaint was presented on the 10th May 1890, and on the same date the following endorsement was recorded on it: "This day the plaint is presented, and it is found that it is presented on an insufficiently stamped paper. The plaintiffs are therefore ordered to pay the proper Court-fees within the 27th May." The proper Court-fees were paid on the 27th May.

It was contended on behalf of the defendants that the suit was barred by limitation, because the deficiency in the Court-fee, payable on the plaint, had not been paid up within one year from the date of the order rejecting the plaintiffs' claim.

* Appeal from Appellate Decree No. 851 of 1891, against the decree of F. Taylor, Esq., District Judge of Purnea, dated the 11th of March 1891, affirming the decree of Baboo Srihuri Lahiri, Munsiff of Araria, dated the 7th of October 1890.

(1) I. L. R., 2, All., 241;
L. R., 6, I. A., 126.

(2) I. L. R., 15, Mad., 29.
(3) I. L. R., 12 All., 129.

Both the Lower Courts, relying on the ruling of the Full Bench of the Allahabad High Court in the case of *Balkaran Rai v. Gobind Nath Tiwari* (1) dismissed the suit as barred by limitation, on the grounds that, when the plaint was presented on the 10th May, it was not in a condition in which it could have been received, filed, or used as a plaint in the case; that the order of the 10th May endorsed on the plaint was not an order in accordance with the provisions of section 28 of the Court-fees Act of 1870, and therefore the payment of the proper Court-fees on the 27th May could not have the retrospective effect of giving validity to the plaint on the 10th May, and that, therefore, the plaint had not been properly stamped within the period of one year, prescribed by the Limitation Act for suits of this description.

1892

MOTI SAHU
v.
CHHATRI
DAS.

The plaintiffs appealed to the High Court.

Baboo *Kuroona Sindhu Mukerji* for the appellants.

Moulvie *Syud Shamsul Huda* for the respondents.

The judgment of the Court (PRINSEP and BANERJEE, JJ.) was as follows:—

This suit has been dismissed by both the Lower Courts as barred by limitation, because the plaint was not properly stamped within the period prescribed by the law of limitation for presenting a suit of this description.

The Lower Courts have followed the judgment of a Full Bench of the Allahabad High Court in the case of *Balkaran Rai v. Gobind Nath Tiwari* (1). That case, we may observe, is not on all fours with this case, as the document concerned was a memorandum of appeal presented to the High Court itself, whereas in the case before us it is a plaint. However, several of the grounds upon which that case was decided are applicable to the present case. We may, at the outset, refer to the case of *Chennappa v. Raghunatha* (2), in which disapproval is expressed of that decision of the Allahabad Court, and a contrary rule of practice is laid down. We may also observe that, although the practice of this Court has varied, it has not been in accordance with the practice laid down by the Allahabad Court. We are of opinion that the decrees of the Lower Courts in this case cannot be maintained.

(1) I. L. R., 12 All., 129.

(2) I. L. R., 15, Mad., 29.

1892
 MOTI SAHU
 v.
 CHHATRI
 DAS.

The plaint was received on the 10th May 1890, and an endorsement was recorded thereon to the following effect:—"This day the plaint is presented, and it is found that it is presented on an insufficiently stamped paper. The plaintiffs are therefore ordered to pay the proper Court-fees within the 27th May." Now, it so happened that, when the Court-fees were paid on the 27th May, it was found that the suit was then barred by limitation, and on this ground the suit has been dismissed. That the Courts are at liberty to extend the period for completing all formalities requisite to make a plaint a regular plaint, so as to be registered in the Court to which it is presented when it is written on a paper insufficiently stamped, is shown by section 54 of the Code of Civil Procedure. Clause (b) of that section enables a Court to fix a time within which the requisite stamped paper is to be furnished, and provision is made that, if this indulgence is not taken advantage of, the plaint shall be rejected. If the requisite stamped paper is put in, and the plaint is otherwise regular, it is admitted and registered. Section 4 of the Limitation Act requires that every suit shall be instituted within the period prescribed therefor by the second schedule to that Act, and the explanation sets out that (for purposes of limitation) a suit is instituted in ordinary cases when the plaint is presented to the proper officer. There is thus a distinction recognized between the presentation of a plaint within the terms of section 48 of the Code of Civil Procedure, and its admission, after all requisite formalities, including the payment of the necessary Court-fees, shall have been completed. Section 6 of the Court Fees Act declares that no document of any of the kinds specified by the Act shall be filed, exhibited, or recorded in any Court of Justice, or shall be received by any public officer, unless, in respect of such document, there be paid a fee of an amount not less than that indicated by the first or the second schedule as the proper fee for such document; and section 28 declares that no document which ought to bear a stamp under that Act shall be of any validity, unless and until it is properly stamped, that is to say, unless a plaint bears a proper stamp within the terms of the Court Fees Act, it shall not be admitted or registered, nor shall it form the subject of any proceedings against any of the parties. It also declares that if any such document is, through mistake or inadvertence, received, filed, or used in any Court or office without

being properly stamped, the presiding Judge or the head of the office may, if he thinks fit, order that such document be stamped as he may direct. In these terms we think the Court Fees Act gives effect to the object of section 54 of the Code of Civil Procedure, and it further declares that, on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance. By this we understand that, if afterwards a document shall have been properly stamped, it is as valid as if it had been properly stamped in the first instance. We think that the terms of section 4 of the Limitation Act and its explanation, and section 28 of the Court Fees Act, show that this suit cannot be properly barred by limitation. We may further refer to the case of *Skinner v. Orde* (1) decided by their Lordships of the Privy Council, in which, in a somewhat analogous case, it was held that the date of the institution of a suit should be reckoned from the date of the presentation of the plaint, and not from that on which the requisite Court-fees were subsequently put in, so as to make it admissible as a plaint. Under such circumstances we feel ourselves unable to follow the judgment of the Full Bench of the Allahabad High Court, and we accordingly set aside the judgments of the Lower Courts, and remand the case to be dealt with on the merits. The costs will abide the result.

1892

MOTI SAHU
v.
CHHATRI
DAS.

Appeal allowed and case remanded:

C. D. P.

Before Mr. Justice Prinsep and Mr. Justice Banerjee.

SHEKĀAT HOSAIN AND ANOTHER (PLAINTIFFS) v. SASI KAR AND OTHERS (DEFENDANTS).*

1892.

May 10.

Public Demands' Recovery Act (Bengal Act VII of 1880)—Cess Act (Bengal Act IX of 1880)—Cesses—Personal Debt—Recovery of Cesses—Property belonging to a person not recorded as proprietor.

An amount due on account of cesses under the Bengal Cess Act, 1880, is only a personal debt, and cannot properly be recovered under the Public

* Appeal from Appellate Decree No. 944 of 1891, against the decree of G. G. Dey, Esquire, District Judge, Midnapore, dated the 10th of April 1891, modifying the decree of Baboo Satkowri Haldar, Munsiff of Kontai, dated the 20th of September 1890.

(1) I. L. R., 2 All., 241 ; L. R., 6, I. A., 126.