

Nawab Nazim. It appears to us that the Act does not empower us to follow property which has been wrongfully alienated, or of which other parties have acquired wrongful possession." Dr. *Rash Behari Ghose* says that, inasmuch as it appears that the alienation by the Nawab Nazim of this property had taken place before the date of this award, that shows that this award did not operate on this particular property. But this is recital only, and when one comes to the operative part of the award, the Commissioners deal with this property by name and declare it to be State land.

This, one would think, should be enough to decide this point; but, in addition to that, the same point had been argued in the Privy Council in the case of *Omrao Begun v. The Government of India*, (1) and in that case the same point was decided in exactly the same way. So that, both on principle and authority, we think this award clearly deals with this particular property, and declares it to be State property. We think that the letter, which authorized or informed the present plaintiff that he was entitled or was to hold possession of all these State lands, and which has been acted upon ever since, is sufficient to entitle him to bring an action for possession of this property against a person wrongfully in possession, and consequently this appeal must be allowed, the decree of the lower Appellate Court reversed, and the decree of the Court of First Instance restored with all costs.

Appeal decreed.

A. A. C.

Before Mr. Justice Pigot and Mr. Justice Banerjee.

YAKUTUN-NISSA BIBEE (PLAINTIFF) v. KISHORBE MOHUN
ROY AND OTHERS (DEFENDANTS).*

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August 11.

Court fee—Memorandum of appeal insufficiently stamped—Deficiency in stamp on memorandum of appeal made good after period of limitation—Court Fees Act (VII of 1870), s. 28.

A memorandum of appeal, insufficiently stamped, was presented in the Court of the District Judge on the 24th May, the last day allowed for it

* Appeal from Appellate Decree No. 1101 of 1890 against the decree of D. Cameron, Esq., District Judge of Dacca, dated the 28th May 1890, affirming the decree of Babu Beni Madhub Mitter, 2nd Subordinate Judge of that district, dated the 30th of March 1889.

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by limitation, and was received and a memorandum endorsed on it, "Appeal within time; stamp duty insufficient Rs. 204 odd." On the 27th May an order was passed by the District Judge, and endorsed on the memorandum, allowing the appellant one week within which to supply the deficiency, and this period was on the 5th June further extended by another fortnight being allowed. On the 13th June the full stamp duty was paid by the appellant.

Held, that the facts of the case did not bring it within either the spirit or the letter of section 28 of the Court Fees Act, and that these proceedings were not such as were contemplated by that section, or to put the appeal in order when the stamp duty was received on the 13th June, and that the appeal had been properly dismissed as being out of time.

Balkaran Rai v. Gobind Nath Tiwari (1) referred to.

IN this case the plaintiff sought to recover the sum of Rs. 3,535-12-9, and to have it declared a charge upon certain specific immovable property. There were 14 defendants, some of whom appeared and contested the plaintiff's claim. The case was tried out on its merits in the Court of first instance with the result that the Subordinate Judge gave the plaintiff an *ex parte* decree against some of the defendants who did not appear, but dismissed the suit with costs as against those who did appear.

The plaintiff being dissatisfied with that decree, on the last day allowed under the Limitation Act presented a petition of appeal in the Court of the District Judge with only an 8-anna stamp affixed, instead of a stamp for Rs. 204-8, the proper amount of stamp duty required, having regard to the value of the suit.

The petition of appeal was presented on the 24th May 1889 and was received, an endorsement being put on it to the effect that it was within time, but that the stamp duty was insufficient. On the 27th May the District Judge passed an order, which was also endorsed on the petition, allowing the plaintiff one week within which to supply the deficiency in the stamp duty. On the 5th of June 1889 this period was further extended by a fortnight; the proper amount of stamp duty was paid on the 13th June 1889.

The appeal came on for hearing before the District Judge on the 28th May 1890, and, on a preliminary objection taken by the respondent's pleader, was dismissed, the District Judge holding

that though the deficient stamp duty had been paid in within the period allowed by the Court, by the time it was paid the period of limitation had long expired, and therefore, upon the authority of the ruling in *Balkaran Rai v. Gobind Nath Tiwari* (1) the appeal must be held to have been out of time.

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Against the decree dismissing the appeal the plaintiff now appealed to the High Court.

Dr. *Rash Behary Ghose* and Baboo *Ashootosh Mukerji* for the appellant.

Mr. *Khundkar* and Moulvie *Seraj-ul-Islam* for the respondents.

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

We think this appeal must be dismissed. We need not deal with the case referred to by the District Judge [*Balkaran Rai v. Gobind Nath Tiwari* (1)], as to which we say nothing save that it is in some respects not on all fours with the decision of this Court in *Syud Ambur Ali v. Kabi Chand Doss* (2), but quite apart from that case we think that the present case does not come within either the spirit or the letter of section 28 of the Court Fees Act. The memorandum of appeal was presented on the last day with an 8-anna stamp, it was received with a memorandum upon it, "the appeal within time; stamp duty insufficient Rs. 204 odd." That was on the 24th of May, the last day. On the 27th an endorsement was made upon it, signed by the District Judge, allowing the appellant one week; on the 5th of June there is a further endorsement allowing him a fortnight, and he appears to have paid the full stamp duty on the 13th of June. We think that the District Judge was quite right in holding that these proceedings were not such as section 28 contemplates, and were not such as to put the appeal in order when the stamp was ultimately received on the 13th of June. We think he was bound to dismiss the appeal.

We dismiss the appeal with costs.

Appeal dismissed.

H. T. H.

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

(2) 24 W. R., 253.