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agreed that that accident does not make it any the less tenancy of *land* within the meaning of section 158, and therefore the rights of the parties under that section have been rightly applied.

BY THE COURT.—We dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CIVIL.

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July, 28.

Before Mr. Justice Piggott.

KHURSHED ALAM KHAN AND OTHERS (PLAINTIFFS) *v.* RAHMAT-ULLAH KHAN AND ANOTHER (DEFENDANTS).*

Civil Procedure Code (1908), order XLVII, rule 7—Review of judgement—Appeal from order granting review—Grounds of appeal.

In an appeal under order XLVII, rule 7, of the Code of Civil Procedure, 1908, from an order granting an application for review of judgement, the appellant is strictly limited to the grounds set forth in the rule.

THE facts of this case are fully set forth in the judgement. Briefly stated they were as follows :—The plaintiffs' suit for possession, mesne profits and certain sums of money was decreed in part and dismissed as to the rest. More than 90 days afterwards the plaintiffs applied for a review of judgement on two grounds, (1) that the court had overlooked the defendants' admission of liability in respect of a particular item of money which ought to have been decreed; and (2) that in view of the facts found the court should have, in accordance with the plaintiffs' general prayer "for any other relief," granted them joint possession with the defendants of certain holdings, although the plaintiffs had claimed exclusive possession of a half share, and that claim was dismissed as being in contravention of section 32 of the Tenancy Act. The defendants objected, *inter alia*, that the application for review was made beyond time. The court overruled the plea with the observation that "there was no force in the plea," and granted the application for review and modified the decree accordingly. The defendants appealed against the order granting the application for review, and the principal grounds of appeal were that there were no adequate grounds for granting the application for review, and that it was barred by time. The appellate court held that according to Article 173 of the

* Civil Revision No. 21 of 1917.

Limitation Act the application for review was beyond time, and the appeal was allowed. The plaintiffs applied in revision to the High Court.

Dr. *S. M. Sulaiman*, (for Maulvi *Iqbal Ahmad*), for the applicants :—

Power to interfere in appeal from an order granting an application for review is expressly limited by the provisions of clauses (*a*), (*b*) and (*c*) of sub-rule (1) of order XLVII, rule 7. The appeal did not raise any questions under clauses (*a*) or (*b*). And under clause (*c*), unless the appellate court came to the conclusion that the application for review was not only presented beyond time but also without sufficient cause for the delay, it would have no jurisdiction to interfere in appeal. There is no finding at all by the appellate court as to whether there was or was not sufficient cause for admitting the application after expiry of the prescribed period. At any rate there has been material irregularity in the exercise of jurisdiction by the appellate court, inasmuch as that court has reversed the order granting review without finding that the admission of the application beyond time was without sufficient cause. Further, section 14 of the Court Fees Act and article 4 of schedule I to that Act show that the Legislature contemplates and recognizes the presenting of applications for review after the expiry of the 90 days prescribed by article 173 of the Limitation Act. On the facts the applicants had amply made out good and sufficient cause for admitting the application for review.

Munshi *Harnandan Prasad*, (for Munshi *Iswar Saran*), for the opposite party :—

No revision lies on a ground of limitation. It has been repeatedly laid down that, even if the lower court has come to an erroneous decision on a question of limitation that does not furnish a ground for entertaining a revision. The objection taken to the decision of the lower appellate court is merely technical. Even if the narrow construction sought to be put upon the terms of clause (*c*) of order XLVII, rule 7, be the correct one, the grounds of appeal sufficiently covered an objection based on that clause. Not even the first court had found that there was any sufficient cause for the late presentation of the application

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for review. Under the circumstances an explicit finding on this point by the lower appellate court was unnecessary, as the applicants had failed to discharge their duty of proving sufficient cause. Article 173 of the Limitation Act is not controlled by any provisions contained in the Court Fees Act. On the merits, there was no sufficient cause for the delay and the application was not maintainable.

PIGGOTT, J.—This is an application in revision against an order of the District Judge of Gorakhpur admitting an appeal, presented under order XLIII, rule 1 (*a*) and order XLVII, rule 7, of the Code of Civil Procedure, against an order of the Subordinate Judge of Basti granting an application for review of a certain judgement and decree of his own court. No second appeal lies against the order of the District Judge, and the only question which I have to consider is whether the applicants now before me, who were the plaintiffs in the suit, have brought their case within the purview of section 115 of the Code of Civil Procedure. The facts of the case are somewhat peculiar. The plaintiffs' claim was one for possession of certain property, together with mesne profits and certain other sums of money claimed as due to the plaintiffs under their cause of action. The claim was partly decreed and partly dismissed, and as a matter of fact the plaintiffs took out execution of the decree to the extent to which it was in their favour. They subsequently applied for review of judgement and their application was allowed. The result of the review was that a declaration in their favour in respect of a certain item of property was substituted for the order dismissing their claim in respect of that property altogether which appeared in the original decree. Consequently upon this order there was a further decree in favour of the plaintiffs for a certain sum as mesne profits. There was also added to the decree an award in favour of the plaintiffs in respect of another small item of money, their claim to which had been dismissed in the decree as originally framed. It must be remembered that the defendants had a right of appeal against the amended decree: if that decree was wrong in law, or inequitable on the facts, the error could have been set right by the District Judge in a regular appeal from the decree. The defendants, however, elected to exercise their alternative right of appeal

against the order granting review of judgement. Now this right has been rigidly limited by the provisions of order XLVII, rule 7, of the Code of Civil Procedure to certain very narrow grounds. The reasons for the limitations thus imposed upon the right of appeal from an order granting a review of judgement are obvious. A court presumably only reviews a previous judgement of its own when it is satisfied that its previous judgement was wrong and unfair to one of the parties. If the judgement as passed upon review is in error, an appeal lies against it, as has already been pointed out. Consequently the Legislature does not intend that the discretion of a court in the matter of granting a review of its own judgement should be interfered with in appeal, except on the specific grounds set forth in order XLVII, rule 7, of the Code of Civil Procedure. The petition of appeal presented to the District Judge did not challenge the order granting review of judgement on any of the grounds set forth in clause (1) (*a*) and (*b*) of rule 7, order XLVII, of the Code of Civil Procedure. There was a plea that the application for review had been presented to the Subordinate Judge after the expiration of the period prescribed therefor. There was also a plea that the first court had granted review of its judgement without sufficient cause; but it seems to me that it is at least open to question whether the memorandum of appeal presented to the District Judge can be regarded as challenging the order granting review of judgement on the ground that the application had been made after the expiration of the period of limitation prescribed therefor and that it had been admitted without sufficient cause. That seems to be the meaning of clause (*c*) of order XLVII, rule 7 (1), of the Code of Civil Procedure. At any rate the District Judge has not decided this point. The question of limitation has not been dealt with in a very satisfactory manner by either of the courts below. The learned Subordinate Judge merely takes note of the fact that the defendants have challenged the application for review of judgement on the ground of its having been presented after the expiration of the prescribed period of limitation and he remarks that there is no force in this objection. I think the learned Subordinate Judge was of opinion that, because the application for review had been presented after the 90th day from

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the date of the decree under the provisions of article 4 of the first schedule to the Court Fees Act, No. VII of 1870, no question of limitation could be raised in respect of it. I think this point is a very arguable one. I should feel considerable hesitation in holding that the plain words of article 173 of the first schedule to the Indian Limitation Act, No. IX of 1908, could be interpreted subject to anything contained in the Court Fees Act. On the other hand, nothing in the Limitation Act can be treated as limiting the inherent power of a court to amend its own manifest errors, which is now expressly recognized by sections 151, 152, and 153 of the Code of Civil Procedure. As a matter of fact the application for review presented to the learned Subordinate Judge raised two distinct points. It called attention to what was unquestionably a mistake or error apparent on the face of the record, in that the decree as originally framed operated to dismiss the plaintiffs' claim for a certain small sum of money in respect of which the defendants had admitted liability in their written statement. In the second place it raised a more debatable question, in that it asked the learned Subordinate Judge to reconsider his decision dismissing altogether the plaintiffs' claim in respect of one of the items of immovable property specified at the foot of the plaint. The order of dismissal had been passed on the express ground that the plaintiffs claimed possession of a specified share of the said property, and had not sought either a decree for joint possession to the extent of their share, or relief by way of declaration. The plaintiffs now took leave to point out to the Court that its decision apparently overlooked a paragraph of the plaint in which there was a general prayer for such alternative relief as the court might consider suitable to the ascertained facts. The plaintiffs at the same time drew the attention of the Subordinate Judge to a reported decision of the Court in which a decree for a declaration of title and for mesne profits had been granted on a state of facts substantially similar to those which the plaintiffs had established in the present suit. The learned Subordinate Judge granted a review on both points. It is certainly arguable that the latter of those two points cannot, without some straining of language, be regarded as a mistake or error apparent on the face of the record. At the same

time the discretion conferred upon a court by the words " for any other sufficient reason " in order XLVII, rule 1, of the Code of Civil Procedure is a wide one, and rule 7 of the same order does not provide for a right of appeal against the exercise of such discretion. In the present case, moreover, the learned Subordinate Judge found himself compelled to make one alteration in the decree passed by him, and he may well have considered that being thus seised of the whole matter he was entitled to take a liberal view of the extent of his jurisdiction in respect of the other question raised. The learned District Judge in appeal seems to have assumed that the first court had entirely overlooked the provisions of article 173 of the first schedule to the Indian Limitation Act. He has remarked that the application for review was clearly beyond time under the provisions of that article and has treated this finding as disposing of the entire question. On behalf of the defendants it has now been contended before me that I ought not to interfere with the decision of the court below merely on the ground that it seems to me to have taken an erroneous view of the question of limitation. To this I should be prepared to accede ; but the objection to the decision of the learned Judge is that he has reversed the order of the first court without coming to a finding that the conditions laid down by order XLVII, rule 7, of the Code of Civil Procedure as justifying interference in appeal with an order granting a review of judgement were completely fulfilled. He has not considered at all the question whether the application for review was or was not made after the expiration of the prescribed period without sufficient cause. I think that on this ground I should be justified in setting aside the order of the court below and sending back the appeal to be disposed of on the merits. After, however, having heard the parties at some length and fully examined the record before me, it seems to me useless to do this, and that the question of the order of the Subordinate Judge granting review of judgement should in the interests of the parties concerned be disposed of now once and for all. As a matter of fact there had been an error committed by the first court in the passing of its first decree which was eminently calculated to give trouble at a subsequent stage in the event of any question of limitation being

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raised. According to the order sheet in the case, the learned Subordinate Judge delivered his judgement in the presence of the parties on the 2nd of December, 1914, and an application for a copy of the judgement and decree was actually presented on the following day. In the meantime, however, the court seems to have come to the conclusion that something further required to be done, or some document required to be inspected before a final decree was passed, and it fixed the 23rd of December, 1914, for further consideration of the case. On that date it re-affirmed the judgement previously delivered and directed a decree to be prepared accordingly. The result was that two decrees seem to have been drawn up. At any rate I find two decrees on the record: one dated the 2nd of December, 1914, and the other dated the 23rd of December, 1914. Such a procedure was obviously calculated to mislead the plaintiffs and to lead them into error as to the period available to them, either for presentation of an appeal or for presentation of an application for a review of judgement. If they could be allowed to calculate the period of limitation from the 23rd of December, 1914, and at the same time to add to the period necessary for obtaining a copy of the decree, the interval between the 3rd and 23rd of December, 1914, during which their application for copy prematurely presented was lying in the copying department of the court, they would actually bring themselves within the limitation period. I do not say that this could be permitted; but it does seem to me that this was a case for the application of the provisions of section 5 of the Indian Limitation Act, which, let it be observed, refer to an application for review of judgement as well as to appeals. If the learned Subordinate Judge, in admitting the application for review, had relied on section 5 above mentioned, I do not think any question of limitation could possibly have been raised at any subsequent stage. That he did not do this in express terms may possibly have been due to the fact that he thought it unnecessary, and was more probably due to the view he took of the law of limitation applicable to an application for review of judgement stamped with the full fee payable. At any rate he did admit the application, and as there were in my opinion clearly sufficient grounds for its admission on the

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date on which it was presented, I do not think that any good purpose would be served by allowing this question of the review of judgement to be further litigated between the parties. I only wish to add that, if the defendants should be advised even now that an appeal is maintainable against the decree as amended, or against any part of that decree, on any valid plea of law or of fact, I think that any court to which such petition of appeal is presented would be well advised to take a liberal view of the provisions of section 5 of the Limitation Act as applicable to the particular circumstances of this case, and as far as possible, allow the defendants an opportunity, should they desire it, of having the more debatable of the two questions raised by the application for review of judgement finally decided on the merits. Subject to these remarks, I set aside the decree of the court below and in lieu thereof pass a decree dismissing the appeal against the order of the Subordinate Judge granting review of judgement, with costs in this and in the lower appellate court.

Order set aside.

APPELLATE CIVIL.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

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November, 1st

NET RAM (APPLICANT) *v.* BHAGIRATH SAH AND OTHERS (OPPOSITE PARTIES).*

Act No. III of 1907 (*Provincial Insolvency Act*), *sections* 5, 15 *and* 16—*Insolvency—Grounds for dismissing petition to be adjudged an insolvent.*

A petition to be adjudged an insolvent presented under the provisions of the Provincial Insolvency Act, 1907, can be dismissed only upon one or other of the grounds mentioned in section 15 of the Act. It is not a good ground for dismissing such a petition that the petitioner's brother, being joint with the petitioner, has not been made a party to it. *Chhatrapat Singh Dugar* v. *Kharag Singh Lachmiram* (1) and *Triloki Nath* v. *Badri Das* (2) referred to.

THIS was an appeal against an order of the District Judge of Meerut under section 15 of the Provincial Insolvency Act, 1907, dismissing a petition presented by one Nathu Ram to be adjudged an insolvent. The application was dismissed apparently upon the main, if not the sole, ground that the petitioner's

*First Appeal No. 40 of 1917, from an order of L. Johnston, District Judge of Meerut, dated the 9th of February, 1917.

(1) (1917) 15 A. L. J., 87. (2) (1913) L. R., 36 All. 250