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DALIP SINGH
v.
MAN
KUNWAR.

section 207 of the Land Revenue Act could not prevent a suit like the present, which was for possession of the property, being instituted in the Civil Court. We agree with the view taken by Mr. Justice WALSH in the case of *Girdhari Chaube v. Ram Baran Misir* (1) and hold that a suit like the present one is not outside the jurisdiction of the Civil Court.

As to the amount of mesne profits, although a plea has been taken in the grounds of appeal, we have not been shown any ground for differing from the conclusion arrived at by the court below. We accordingly dismiss the appeal with costs

Appeal dismissed.

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January, 7.

Before Justice Sir Pramada Charan Banerji and Mr. Justice Gokul Prasad.

SHAMBHU NATH (DEFENDANT) v. BADRI DAS (PLAINTIFF)*

Act No. IX of 1908 (Indian Limitation Act), section 5—Appeal—Presentation—Vakalatnamah.—Vakalatnamah duly accepted, but name of pleader not filled in in the body of the document.

Two pleaders filed an appeal on behalf of a client; but after they had done so it was discovered that their vakalatnamah, though duly accepted by both, did not contain their names in the body of the document. Thereupon a fresh vakalatnamah was filed, with a petition by the client stating the facts and praying that the memorandum of appeal might be taken as having been presented in the date of the filing of the fresh vakalatnamah and the delay excused under the powers conferred by section 5 of the Indian Limitation Act, 1908. The court nevertheless dismissed the appeal.

Held that the lower appellate court was wrong in not admitting the appeal under section 5 of the Indian Limitation Act, 1908. And *quere* whether a vakalatnamah duly accepted by a pleader should be regarded as of no validity because by an oversight the pleader's name has been omitted from the body of the document. *Muhammad Ali Khan v. Jas Ram* (2) referred to.

THE facts of this case are fully set forth in the judgment of the Court.

Munshi *Gulzari Lal*, for the appellant.

Maulvi *Iqbal Ahmad*, for the respondent.

BANERJI and GOKUL PRASAD, JJ.:—This was a suit for the demolition of certain constructions alleged to have been made

* Second Appeal No. 415 of 1918 from a decree of Lalita Prasad Johri, Subordinate Judge of Moradabad, dated the 21st of December, 1917, confirming a decree of Joti Sarup, Munsif of Bijnor, dated the 26th of February, 1917.

(1) (1916) 14 A. L. J., 85.

(2) (1913) I. L. R., 36 All., 46.

by the defendant. It was decreed by the Munsif on the 26th of February, 1917. On the 2nd of April, 1917, the defendant preferred an appeal to the District Judge from the decree of the court of first instance. The memorandum of appeal was signed and presented by two pleaders, who held a vakalatnamah, in the body of which their names were not mentioned but at the foot of which there was an acceptance of the vakalatnamah by both the pleaders. When the appeal came on for hearing an objection was taken to the effect that as the names of the pleaders had not been mentioned in the body of the vakalatnamah the presentation of the appeal by those pleaders was an invalid presentation and the appeal could not be entertained. Two days before the date on which the appeal was decided a petition was filed by the appellant supported by an affidavit in which he stated that the names of the pleaders had been omitted from the vakalatnamah through an over-sight, that the same pleaders had appeared for him in the court of first instance and that when the petition of appeal was presented he accompanied the pleaders and presented the petition of appeal to the Munsif of the court. In that petition he further asked that, if this presentation was not deemed to be sufficient, the memorandum of appeal might be deemed to have been presented on the date of the application and that in view of the facts stated in the affidavit the appeal might be admitted by the court in the exercise of its powers under section 5 of the Limitation Act. With that application a fresh vakalatnamah containing the names of the same pleaders and accepted by them was filed. The learned Subordinate Judge dismissed the appeal, holding that it had not been properly presented, and purported to follow the ruling of this Court in the case of *Muhammad Ali Khan v. Jas Ram* (1) which was affirmed in Letters Patent Appeal. It does not appear whether in that case the vakalatnamah had been accepted by the pleader. If the vakalatnamah had been accepted by the pleader, as was the case in the present suit, we think it would be too technical to hold that the vakalatnamah was not a valid authority to the pleader to appear because his name did not appear in the body of it. However,

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in the present case it is not necessary to enter into that question, inasmuch as in our opinion the court ought to have exercised its discretion under section 5 of the Limitation Act, and admitted the appeal as presented on the 19th of December, 1917. The court refused to apply section 5 not because in its opinion there were no valid reasons for admitting the appeal after time, but simply because the court thought that the petition of appeal was not in proper form. As a matter of fact it was in proper form. It was signed by the pleaders who were given an authority to appear at least on the 19th of December, 1917. We think that the court below should have admitted the appeal under section 5 of the Limitation Act and heard and decided it on the merits. We direct that the appeal to the court below be admitted under section 5. We allow the appeal, set aside the decree of the court below and remand the case to that court with directions to restore the appeal to its original number and to dispose of it according to law. The parties will bear their own costs of this appeal.

Appeal allowed.

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January, 6.

Before Mr. Justice Piggott and Mr. Justice Walsh.

SITAL PRASAD (JUDGMENT-DEBTOR) v. MESSRS. CLEMENT ROBSON AND COMPANY (DECREE-HOLDERS) AND SAHU RAM (JUDGMENT-DEBTOR)*

Civil Procedure Code, 1908, section 42; order XXI, rules 6, 50—Order filing award against a firm—Execution—Question whether a certain person is a partner in the firm—Transfer of order to another court for execution—Such court competent to determine the question.

Where an award made under the Indian Arbitration Act, 1899, has been made a rule of court, it may be transferred for execution to another court just in the same way as a decree, and the court to which it is so transferred has, as regards any matters which are to be determined in execution proceedings, the same powers as the "court which passed the decree," i.e., as the court which ordered the award to be filed. *Adhar Chandra v. Pulin Behari* (1) referred to.

THE facts of this case are fully stated in the judgment of the Court.

Babu *Piari Lal Banerji*, for the appellant.

*First Appeal No. 92 of 1920 from a decree of P. K. Roy, Subordinate Judge of Meerut, dated the 15th of March, 1920.