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appeal before us. Whatever may have happened previously, the lower appellate court has now recorded a finding that adverse possession for 12 years prior to the institution of the suit is not proved on behalf of the defendants. That is a finding of fact which cannot be successfully impugned on any of the grounds taken in the memorandum of appeal before us. This appeal, therefore, fails and we dismiss it accordingly with costs.

Appeal dismissed.

1920 December, 22.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Ryves.

GAJADHAR SINGH (PLAINTIFF) v. BASANT LAL AND OTHERS (DEFENDANTS.)*

Act No. IX of 1908 (*Indian Limitation Act*), *section* 5—*Amendment of decree—Appeal—Limitation.*

Where a decree has been amended and an appeal is filed against the amended decree which is *primâ facie* barred by limitation, it is not in every case that the appellant can pray in aid the provisions of section 5 of the Indian Limitation Act, 1908. He cannot do so, for instance, if his appeal does not attack the *amended* decree, or raise some question connected with the amended decree. *Amar Chandra Kundu* v. *Asad Ali Khan* (1), *Brojo Lal Rai Chowdhury* v. *Tara Prasanna Bhattacharji* (2) and *Kalu* v. *Latu* (3) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

The Hon'ble Munshi *Narain Prasad Ashthana*, for the appellants.

Pandit *Shiam Krishna Dar*, for the respondent.

MUHAMMAD RAFIQ and RYVES, JJ.:—This appeal arises out of a suit brought by the plaintiff appellant as lambardar for the recovery of arrears of rent or revenue against the defendant respondent, a co-sharer. The claim was laid at Rs. 456, for three years immediately preceding the institution of the suit. The claim was resisted on various pleas. The Assistant Collector decreed the claim for Rs. 125-12-2 on the 30th of May, 1917. On the 8th of August, 1917, the plaintiff made an application to the Court of the Assistant Collector for amendment of the decree

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* Second Appeal No. 13 of 1918 from a decree of H. J. Collister, District Judge of Agra, dated the 19th of September, 1917, confirming a decree of Salig Ram Pathak, Assistant Collector, first class, of Muttra, dated the 30th of May, 1917.

(1) (1905) I. L. R., 32 Calc., 903. (2) (1905) 3 C. L. J., 188.
(3) (1893) I. L. R., 21 Calc., 259.

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on the ground that the evidence of the patwari showed that the money due to the plaintiff from the defendant for revenue for the years in suit was Rs. 374-2-5. The Assistant Collector without issuing notice to the opposite party amended the decree then and there. On the 11th of September, 1917, the plaintiff preferred an appeal to the court of the District Judge complaining of the disallowance of interest to him in the decree of the first court. The appeal was rejected by the learned Judge on the ground of limitation. The plaintiff came up in second appeal to this Court, and the appeal was heard by a learned Judge of this Court who referred the case to a Bench of two Judges, as he was of opinion that the point raised was one that was not covered by any authority of this Court. The learned vakil for the appellant relies in support of his argument on two cases, namely, *Amar Chandra Kundu* v. *Asad Ali Khan* and (1) *Brojo Lal Rai Chowdhury* v. *Tara Prasanna Bhattacharji* (2). In the former case no reason is given for the view enunciated therein. In the latter case a reasoned judgment is given for holding that in certain cases when an appeal is preferred from an amended decree, time will be allowed under section 5 of the Limitation Act. Mr. Justice MUKERJI has explained the law on the point thus:— "We desire, however, to make it clear that every amendment made in a decree under section 206 of the Code of Civil Procedure, does not necessarily entitle a party who prefers an appeal against the decree to claim an extension of time under the second paragraph of section 5 of the Limitation Act; whether there is sufficient cause for such extension must depend upon the circumstances of each individual case; for instance, if the amendment has no relation to the grounds upon which the validity of the decree is sought to be challenged in appeal, it is difficult to see how an admission of the appeal out of time may be reasonably claimed merely on the ground that an amendment has been made in the decree. On the other hand, if the grounds on which the appeal is based are intimately connected with the amendment of the decree or if, as in the case before us, the grounds are directed against the decree only in so far as it has been amended, an appellant may legitimately ask the court to exercise in his favour the discretion vested in it by

(1) (1905) I. L. R., 32 Calc., 908 (2) (1905) 3 C.L.J., 188.

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paragraph 2 of section 5 of the Limitation Act. Any other view might lead to a failure of justice in many cases, because as pointed out in the case of *Kalu* v. *Latu* (1), there is no limitation for an application under section 206 of the Code of Civil Procedure whereas a short period of time is prescribed within which an appeal must be filed; if, therefore, an amendment is obtained on erroneous grounds after the period for appealing has expired, the party affected by such erroneous order would be without remedy unless he was allowed to present an appeal against the amended decree, and the court, in the exercise of its powers under section 5 of the Limitation Act, admitted the appeal though presented out of time." Applying the principle laid down by the learned Judge to the present case we find that the appeal of the plaintiff appellant was rightly dismissed by the learned District Judge. The appeal to the learned District Judge did not attack the amended decree or raise any question connected with the amended decree. The question of interest could have been raised on the original decree and was connected with the original decree. Another argument on behalf of the plaintiff appellant is that his application to the court below for amendment of the decree was really one for review of the decree. This is a new ground which was not taken in the court below, nor in the grounds of appeal before us, nor can we say after examining the language of the application of the plaintiff and the procedure of the first court that the application of the plaintiff was for review. The appeal, therefore, fails and is dismissed with the costs.

Appeal dismissed.

(1) (1893) I. L. R., 21 Calc., 259.