

MISCELLANEOUS CIVIL.

1928

June, 13.

*Before Mr. Justice Sulaiman, Acting Chief Justice.*BRIJBHUKHAN AND OTHERS (PLAINTIFFS) *v.* TOTA RAM
AND OTHERS (DEFENDANTS).**Act No. VII of 1870 (Court Fees Act), section 4—Civil
Procedure Code, section 149—Memorandum of appeal
presented on an insufficient stamp—Procedure.*

A court is not bound to accept a memorandum of appeal when it has been brought to its notice that the memorandum is insufficiently stamped. The concession contemplated by section 149 of the Code of Civil Procedure cannot be claimed as of right. *Ram Sahay Ram Pande v. Kumar Lachmi Narayan Singh* (1), *Lekh Ram v. Ramji Das* (2) and *Akharaju Narayana v. Akharaju Seshamma* (3), referred to. *Achut Ramchandra Pai v. Nagappa Bab Balgya* (4), dissented from.

No doubt, if an insufficiently stamped memorandum of appeal is accepted by inadvertence, time may be given to the appellant to supply the deficiency. But if the court is aware *ab initio* of the insufficiency of the stamp, it ought to return the memorandum to the appellant in order that he may, if the case admits, re-present it properly stamped and apply for an extension of time under section 5 of the Indian Limitation Act, 1908. *Jai Singh Gir v. Sita Ram Singh* (5), referred to.

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

Pandit *Shambhu Nath Chaube*, for the appellant.

SULAIMAN, A. C. J. :—It seems to be the practice of some junior vakils to file appeals with insufficient court-fee stamps, knowing that they are insufficient, with a view to save limitation. I think that such deliberate attempts to get round the provisions of the Court Fees Act should not be tolerated. If a litigant has not got sufficient money ready to pay the whole court fees, the

*Application in Second Appeal No. Nil of 1928.

(1) (1917) 8 Pat. L. J., 74.

(2) (1919) I. L. R., 1 Lah., 234.

(3) (1914) 27 M. L. J., 677.

(4) (1913) I. L. R., 38 Bom., 41.

(5) (1923) 21 A. L. J., 333.

appeal ought to be filed when such court-fees have been made good, accompanied with an application for extension of time. But the filing of an insufficiently stamped appeal, knowing it to be defective, should not be permitted.

No doubt the Bombay High Court has held that an appellate court is bound to accept an insufficiently stamped memorandum of appeal and to grant time to make it good:—*Achut Ramchandra Pai v. Nagappa Bab Balgya* (1). But this view has not been followed at Patna: *Ram Sahay Ram Pande v. Kumar Lachmi Narayan Singh* (2); nor by the Lahore High Court, *Lekh Ram v. Ramji Das* (3). The Madras High Court has also dissented from the Bombay view: *Akharaju Narayana v. Akharaju Seshamma* (4).

Section 149 of the Code of Civil Procedure no doubt gives a court power to allow deficiency to be made good in its discretion. The concession cannot be claimed as of right. But section 4 of the Court Fees Act expressly provides that no document shall be “filed, exhibited, or recorded in, or shall be received, or furnished by any of the said High Courts in the exercise of its original, appellate or revisional jurisdiction, unless in respect of such document there be paid a fee of an amount indicated in the schedules as the proper fee.”

I am clearly of opinion that we have full power to refuse to accept a memorandum of appeal when it has the endorsement of the Stamp Reporter that the amount of the court fees paid is insufficient; otherwise the provisions of section 4 of the Court Fees Act would be evaded indirectly. That there is such a discretion is clear from the case of our own High Court, *Jai Singh Gir v. Sita Ram Singh* (5). Chapter III, rule 10, of our rules also contemplates a case where an insufficiently stamped document

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(1) (1913) I. L. R., 38 Bom., 41. (2) (1917) 3 Pat. L. J., 74.
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has been filed or used in the Court or office "through a mistake or inadvertence."

I accordingly refuse to accept these insufficiently stamped appeals and direct them to be returned to the counsel, with liberty to file them afresh on payment of full court fees, accompanied by an application for extension of time under section 5 of the Limitation Act, provided good cause is shown for the extension.

REVISIONAL CIVIL.

Before Mr. Justice Bennet.

DEBI DAYAL (DEFENDANT) v. BALDEO PRASAD (PLAINTIFF) AND AUDH NARAIN AND ANOTHER (DEFENDANTS).*

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Act No. IX of 1872 (Indian Contract Act), section 251—Act No. IX of 1908 (Indian Limitation Act), sections 19, 20 and 21—Partnership—Joint Hindu family—Acknowledgement.

When a joint Hindu family carries on a business, the members thereof are in the position of partners as regards persons dealing with that business.

An acknowledgement, therefore, made by one member of the family, of a debt due by the family in the course of its family business, can be availed of by the creditor as against the entire family. *Gadu Bibi v. Parsotam* (1) followed *Lalta Prasad v. Babu Prasad* (2), distinguished.

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

Pandit Narmadeshwar Prasad Upadhiya, for the applicant.

Munshi Binod Bihari Lal, for the opposite parties.

BANERJI, J. :—These are two applications in revision, No. 8 of 1928 by Debi Dayal, defendant No. 1, and

*Civil Revision No. 8 of 1928.

(1) (1888) I. L. R., 10 All., 418. (2) (1909) I. L. R., 32 All., 51.