

## APPELLATE CIVIL.

*Before Mr. Justice Dalal and Mr. Justice Pullan.*

KISHAN LAL AND ANOTHER (PLAINTIFFS) *v.* TIKA AND ANOTHER (DEFENDANTS).<sup>\*</sup> 1927  
January, 28.

*Act No. IX of 1908 (Indian Limitation Act), section 14—  
Limitation—Appeal filed in wrong court owing to bonâ  
fide mistake of appellant.*

An appellant through a *bonâ fide* mistake, probably caused by erroneous advice given to him by his pleader, filed an appeal in a court which had had jurisdiction to entertain it once, but not long previously ceased to have such jurisdiction. As soon as his mistake was pointed out to him he lost no time in presenting his memorandum of appeal to the right court; but by that time the appeal was on the face of it barred by limitation.

*Held*, that section 14 of the Indian Limitation Act, 1908, applied and the appellant was entitled to exclude the time which he had spent in taking his appeal to the wrong court. *Magbul Ahmad v. Murla* (1) and *Brij Indar Singh v. Kanshi Ram* (2), followed.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

Munshi *Panna Lal*, for the appellants.

Dr. *N. C. Vaish*, for the respondents.

DALAL and PULLAN, JJ. :—The lower court threw out this appeal on the ground that it was barred by limitation. The suit relates to the tahsil of Sikandrabad which is situated in the Bulandshahr district, but was up to the year 1921 in the jurisdiction of the District Judge of Meerut. This suit was decreed on the 28th of November, 1923, and on the 10th of

\* Second Appeal No. 1534 of 1924, from a decree of Hari Har Lal, District Judge of Bulandshahr, dated the 23rd of May, 1924, confirming a decree of Kedar Nath Mehra, Munsif of Ghaziabad, dated the 28th of November, 1923.

(1) (1916) 14 A.L.J., 212.

(2) (1917) 15 A.L.J., 777.

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January, 1924, an appeal was preferred in the court of the District Judge of Meerut. The Munsarim of that court accepted the appeal and it was made over to an Additional Judge for trial. Consequently it was not until the 10th of March that it was discovered that the appeal should have been filed in the court of the District Judge of Bulandshahr. The appeal was then returned to the plaintiff, who took it without delay to the proper court. We have to consider whether in a case of this kind the appellant should be punished for what must have been a mistake of his counsel. As far as he was concerned, it was clearly a *bonâ fide* mistake and he has throughout prosecuted his case with diligence. It is not, in our opinion, improper to apply the provisions of section 14 of the Limitation Act to a case of this kind although it is an appeal, and in our opinion we are justified in holding that this was a *bonâ fide* mistake, that the appellant throughout acted in good faith and that his appeal should be heard. There is an authority for this view in the ruling in *Magbul Ahmad v. Murla* (1) and we believe that we are acting in accordance with the principles laid down by their Lordships of the Privy Council in the case of *Brij Indar Singh v. Kanshi Ram* (2).

We, therefore, allow this appeal and remand the case to the lower appellate court for decision on the merits. The costs will follow the result.

*Appeal allowed.*

(1) (1916) 14 A.L.J., 212.

(2) (1917) 15 A.L.J., 777.