

has been greatly influenced in the decision to which he has come by the fact that after the mutation the husband performed various acts which the learned Judge thought proved the contention of the defendants that there never had been a real transfer of the property or that the deed of gift was not intended to be operative. Further, when Mst. Kapuri died in 1921, Mohan Lal proceeded to get his name recorded in the revenue papers by mutation proceedings. The papers record that mutation was obtained by way of inheritance, that is, inheritance from his wife Mst. Kapuri. If the contention of the defendants was correct, there would, of course, have been no necessity for this entry in the revenue papers. The plaintiff and her sister at that time were very young and minors, and Mohan Lal was the guardian, at any rate, of one of them. They were not in a position to protest against or dispute the acts of their father.

All these facts amount, in our view, to very strong circumstantial evidence of acceptance by the donee, Mst. Kapuri, of the gift, and we hold accordingly that acceptance has been proved by the plaintiff within the meaning of section 3 of the Evidence Act.

* * * * *

The appeal is, therefore, allowed with costs, and the claim decreed.

REVISIONAL CIVIL.

Before Mr. Justice Boys.

REOTI PRASAD (PLAINTIFF) *v.* KUNJI LAL
(DEFENDANT).*

Civil Procedure Code, order XX, rule 11—Instalment decree—Discretion of court—Amount of instalment and future interest.

Where the court directs a decree to be paid by instalments, the amount of the instalments and the period for their payment is a matter for the discretion of the court; but it is a discretion which is to be exercised within bounds and

1932

ANANDI DEVI

v.
MOHAN LAL.

1932

January, 28.

1932
 REOY
 PRASAD
 v.
 KUNJI LAL.

not in a manner so as to constitute a virtual denial of the plaintiff's rights. So, where the amount of instalment was fixed at such a sum that it would take the plaintiff more than seven years to recover the decreed amount, and no future interest was allowed to him, the High Court altered the decree by doubling the amount of instalment and allowing future interest.

Mr. *Hazari Lal Kapoor*, for the applicant.

Mr. *S. N. Verma*, for the opposite party.

Boys, J. :—This is a plaintiff's application from a decree by a court of small causes. The plaintiff sued on a bond for Rs. 700. The defendant admitted the claim, but put forward pleas *ad misericordiam* that he was an old man and could not possibly afford to discharge the decree which amounted to Rs. 884 as a whole, and he asked for the decree to be paid by instalments. The court briefly recorded its view that he should pay in six-monthly (half-yearly) instalments of Rs. 60 each, on default the whole to be due, and similarly the whole was to be due if any attempt was made by the defendant to alienate his property. No future interest was allowed.

The result of this decree is that it would take the plaintiff more than seven years to recover the amount now due to him, and he would also have no future interest. It is manifest that the amount of the instalments and the period for their payment is a matter of the discretion of the court; but it is a discretion which is to be exercised within bounds. The exercise of it in the manner of the present suit constitutes a virtual denial of the plaintiff's rights. Another case almost on all fours with this is to be found in the judgment of another Judge of this Court, Mr. Justice MUKERJI, in Civil Revision No. 33 of 1927, decided on the 8th of April, 1927. In that judgment Mr. Justice MUKERJI said: "The result was that there was a decree which carried no future interest and allowed the judgment-debtor to pay at the rate of Rs. 2 per month, which meant that the

decree could not be satisfied till the expiration of sixty-one months, i.e., over five years. The discretion given to the courts to grant instalments should not be so exercised as to practically nullify a claim for money". The learned Judge returned the case to the court of small causes for rehearing and disposal. While agreeing with the learned Judge in the remarks I have quoted, I think that this Court could well dispose of the matter and save further expense. Neither counsel suggests that any further material is available or could properly be allowed now to be put before the court. To decide it here will be to the interest of both parties.

I set aside the decree of the court of small causes, and, in lieu thereof, decree the plaintiff's claim for Rs. 884 with costs and future interest at the usual rate of 6 per cent., and allow the defendant to pay in half-yearly instalments of Rs. 120 each, commencing from July 28th next. The applicant here will have his costs.

APPELLATE CIVIL.

Before Mr. Justice Banerji and Mr. Justice King.

BISHAMBHAR NATH (DEFENDANT) *v.* THE AGRA
ELECTRIC STORES (PLAINTIFF).*

1932
February, 10.

Companies Act (VII of 1913), section 207—Powers of liquidator in voluntary winding up—Suits for unpaid calls—Companies Act (VII of 1913), Table A, articles 14 and 28—Forfeiture of shares—Liability for interest—Limitation for suit for money remaining unpaid on forfeited share—Limitation Act (IX of 1908), articles 112, 115.

When a share has been forfeited for non-payment of calls, the starting point of limitation for a suit to recover the money remaining unpaid on the forfeited share is, according to article 28 of Table A annexed to the Companies Act, the date of the forfeiture. Such a suit is within time if brought within three

*Second Appeal No. 258 of 1930, from a decree of J. N. Dikshit, Additional Subordinate Judge of Agra, dated the 9th of November, 1929, modifying a decree of Kishori Lal, Munsif of Agra, dated the 13th of May, 1929.