

passage of Baillie has been the subject of judicial decision in the Punjab Chief Court in the case of *Jindu Ram v. Hussain Bakhsh* (1). On pages 102 and 103 the court dealt exhaustively with this passage in Baillie and came to the conclusion that the passage did not prevent a right of pre-emption accruing to a wakf. With the argument set forth there we are in agreement and it is unnecessary to recapitulate it. It is to be noted that that suit was brought under section 31 of the Punjab Pre-emption Act and the present suit is brought under the Agra Pre-emption Act, section 12. Now Baillie of course was not dealing with the rights of persons under these Pre-emption Acts which were passed long after his book was written and his observations, sound or unsound, merely relate to the right of pre-emption under the Muhammadan law. We are of opinion for the reasons already stated that the plaintiff has a perfect right of pre-emption and that no disability whatever attaches to the juristic rights in the case of a wakf. Learned counsel for respondent admits that no further point remains in the grounds of appeal which were brought before the lower appellate court and that our decision on the point mentioned above governs the whole case. For these reasons we allow this appeal with costs throughout.

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KHUDAWAND  
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RAJKALI

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## REVISIONAL CIVIL

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*Before Mr. Justice Bennet and Mr. Justice Ismail*

PUTTU LAL (APPLICANT) *v.* BHAGWAN DAS AND OTHERS  
(OPPOSITE PARTIES)\*

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November, 12

*Limitation Act (IX of 1908), section 12(2)—“Time requisite for obtaining copy”—Judgment delivered on last working day before vacation—Application for copy made after the re-opening day—Whether period of vacation should be excluded.*

Judgment was delivered in a suit on 2nd June, 1936, the last working day before the long vacation. The courts re-opened

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\*Civil Revision No. 534 of 1936.  
(1) (1914) 24 Indian Cases 100.

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on 4th July, 1936. Application for copies of judgment and decree was made not on the 4th but on the 7th July, 1936: Held that in computing the "time requisite for obtaining a copy", as provided in section 12(2) of the Limitation Act, the period of the long vacation could not be excluded in this case.

Mr. S. N. Seth, for the applicant.

Mr. G. S. Pathak, for the opposite parties.

BENNET and ISMAIL, JJ.:—This is a civil revision from an order of the learned District Judge of Cawnpore holding that an appeal filed in his court was filed beyond time and dismissing it on that ground and also dismissing an application to apply section 5 of the Limitation Act. The trial court delivered judgment on the 2nd June, the last working day before vacation, and the courts reopened on the 4th July, which was a Saturday, after vacation. No application for copy was made on that date by the appellant and it was not until the 7th July that he made an application for copies of the judgment and decree and these were received on the 11th July and the appeal was filed on the 18th July. The period of limitation is 30 days for an appeal to the district court. Two points were urged before the lower court and have been urged in revision. One point was that under the provisions of section 12 of the Limitation Act, sub-section (2), this appeal should be held to have been filed within time, and the second argument was that even if this be not so, there are facts existing in the present case on account of which the court should have extended time under section 5 of the Limitation Act. As regards the application under section 5 the court below held that there were two affidavits, one by each party, and that as the case was one of oath against oath the court could not hold that the appellant had proved any facts which would warrant the application of section 5 of the Act. As this is a civil revision we consider that we cannot interfere with this conclusion of fact of the learned Judge of the court below and therefore it is not a case where we should pass any order under section 5 extending the period for

filing the appeal. The question for our consideration which has been argued in this Court is the interpretation to be placed on section 12(2) which states as follows: "In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded."

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Now for the applicant in revision it is contended that the time requisite for obtaining a copy of the decree is not to be computed from the date on which the application for copy was made up to the time when the copy was granted. In the present case the application for copy was made on the 7th July and the period of limitation had already expired on the 4th July and therefore as the application was made after the limitation period had expired the period of limitation could not be extended, but learned counsel contended that the words "time requisite" should bear in the circumstances of the present case a different meaning than the period between an application and the granting of the application. He contended that because the judgment was pronounced on the day on which the courts closed a copy could not have been obtained during vacation even if an application had been made on the closing day, as the copying department does not work during the vacation, and therefore he contended that the whole period of the vacation should be excluded. The result of the granting of such an argument would be that a fresh start for limitation would begin from the opening day and the period within which an application for a copy could be made would apparently be 30 days from that date. We do not think that the Limitation Act intended that any such provision should apply. There are certain cases in which an application for a copy has been made on the opening day after vacation and it has been held that under those

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circumstances under section 12(2) the period of limitation may be extended by the period requisite for obtaining a copy, i.e., the period between the date of the application and the date of granting the copy. It was held in *Saminatha Ayyar v. Venkatasubba Ayyar* (1) that an application for copy made on the opening day did extend the period of limitation under section 12(2). A later ruling in *Subramanyam v. Narasimham* (2) held that it was only in case an application for copy was made on the opening day that section 12(2) could be applied. It is true that in certain rulings of the Patna High Court a wider view has been taken, i.e., in *Debi Charan Lal v. Mehdi Hussain* (3) and *Munshi Mahton v. Lachman Lal* (4). On the other hand it is pointed out that this Court has not taken that view and that in *Bechi v. Ahsanullah Khan* (5) at pages 470, 471 and 472 there are observations contrary to this view by MAHMOOD, J. We consider that we should not follow the view which has been held on two occasions by the Patna High Court because that view would lead to a very considerable extension of the period of limitation and that view has not been followed in any ruling of this High Court, and the ruling quoted of this High Court and the Madras rulings take a contrary view. Accordingly we dismiss this application for revision with costs.

(1) (1903) I.L.R. 27 Mad. 21.

(2) (1920) I.L.R. 43 Mad. 640.

(3) (1916) 35 Indian Cases 888.

(4) A.I.R. 1929 Pat. 615.

(5) (1890) I.L.R. 12 All. 461.