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of the learned single Judge, challenged in appeal, is right.

The result is that the appeal fails and is dismissed with costs.

Before Mr. Justice Bennet

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October, 27

CHHUTTAN LAL (DEFENDANT) *v.* DWARKA PRASAD (PLAINTIFF)*

Limitation Act (IX of 1908), section 14—"Court of appeal" includes court of revision—Time occupied in revision should be excluded—Period between dismissal of appeal and the filing of revision, whether should be excluded—Period between dismissal of revision and subsequent filing of the plaint in the proper court.

The words "court of appeal" in section 14 of the Limitation Act are not meant to exclude a court of revision, and the words "civil proceeding" are wide enough to include not only an appeal but also a revision, and therefore the time taken in a civil revision in a High Court may be excluded under section 14.

Neither the period between the dismissal of the appeal and the filing of the revision, nor the period between the dismissal of the revision and the subsequent filing of the plaint in the proper court, can be excluded under section 14 or any other section of the Limitation Act.

Mr. *S. N. Seth*, for the appellant.

Mr. *Vishwa Mitra*, for the respondent.

BENNET, J.:—This is a first appeal by the defendant against an order of the lower appellate court remanding the suit for decision. The facts are that the plaintiff and defendant had a partnership ending on 31st March, 1928, and on 30th March, 1931, the plaintiff brought a suit in the court of the Civil Judge of Lansdowne for accounts. The defendant pleaded want of jurisdiction and on 9th May, 1932, the court ordered the plaint to be returned to the plaintiff for presentation to the proper court. An appeal was filed in the court of the District Judge by the plaintiff and on 17th May, 1933,

*First Appeal No. 260 of 1936, from an order of C. I. David, First Civil Judge of Meerut, dated the 2nd of September, 1936.

this appeal was dismissed and on 2nd June, 1933, there was an order of the District Judge for return of the plaint to the plaintiff for presentation to the proper court. The plaintiff would have been well advised if he had done so but he did not do so. He filed a revision against the District Judge's order in the High Court. Now there was no reason why he should not have filed his plaint in the proper court in Meerut while his revision was pending and asked the Meerut court to stay the plaint until the revision was decided. The revision was dismissed on 2nd November, 1934. The plaintiff then filed his plaint in the proper court in Meerut on 19th November, 1934. The defendant pleaded bar of limitation and the issue was framed: "Is the suit for account time barred?" The trial court decided that it was not time barred on the presumption that the periods of limitation for the appeal and revision were to be tacked on to the period during which the proceedings actually remained pending in the courts, and that "regard being had to the common course of events a period of 17 days does not appear to be excessive for getting back the plaint from the High Court and filing it here." On appeal the lower appellate court considered that the finding was unsound and vague but held that the plaintiff should be given an opportunity to say how he spent the period of 17 days before filing the suit in a court in Meerut, and has remanded the case on that ground. Against that order an appeal has been filed on the ground that the lower appellate court has erred in law in not dismissing the suit. Learned counsel based his argument on three points. The first point was that under section 14 of the Limitation Act the period during which the revision was pending in the High Court could not be excluded. This argument is based on the fact that in the reference to the time in section 14, viz., "the time during which the plaintiff has been prosecuting with due diligence another civil proceeding whether in a court of first

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instance or in a court of appeal against the defendant shall be excluded", a court of revision is not mentioned and it is therefore argued that the time taken during revision will not come under section 14. This view has been held in *Venkata Rangaya* v. *Murela Venkaya* (1) by a single Judge of the Madras High Court, and in *Narayan Ambaji Chavan* v. *Hari Ganesh Navare* (2) by a single Judge of the Bombay High Court. On the other hand a wider view has been taken and it has been held that the words "court of appeal" merely indicate the court whose order is in question and the words "civil proceedings" are wide enough to include not merely an appeal but also a revision and that therefore the time taken in a civil revision in a High Court may be excluded under section 14 of the Limitation Act. This view was held by a Bench of the Madras High Court in *Venkatragayya Appa Row* v. *Murala Sriramulu* (3) and also in a ruling of a Bench of this Court in *Seth Mul Chand* v. *Seth Samir Mal* (4). It is not shown that this ruling of a Bench of the Allahabad High Court has been dissented from in any later ruling. The point arose but was not decided in *Hamida Bibi* v. *Fatima Bibi* (5). Following the Allahabad ruling I hold that the time of the civil revision in the High Court may be excluded under section 14.

The second point of learned counsel was that no explanation had been given for the period between the dismissal of the appeal on the 17th May, 1933, by the lower appellate court and the filing of the revision in the High Court on the 29th August, 1933. His third point was that no explanation has been given for the period between 2nd November, 1934, when the revision was dismissed in the High Court, and 19th November, 1934, when the plaint was filed in the lower court. Learned counsel argued that these periods do not count under any section of the Limitation Act. He pointed

(1) (1912) 14 Indian Cases 259. (2) A.I.R. 1930 Bom. 505.
(3) (1912) 17 Indian Cases 593. (4) Weekly Notes 1882, p. 59.
(5) (1918) 16 A.L.J. 429(431).

out that explanation I of section 14 states that in excluding the time during which a former suit or application was pending, the day on which that suit was instituted or application made and the day on which the proceedings therein ended shall both be counted. He argued, in my opinion correctly, that this section means that the period between the 29th August, 1933, and the 2nd November, 1934, when the revision was dismissed in the High Court, is the only period which can be deducted under section 14 of the Limitation Act after the appeal was dismissed on the 17th May, 1933. This view has been held in *Runglal Mandal* v. *Kamola Ranjan Roy* (1) a Bench ruling, and also in *Haridas Roy* v. *Sarat Chandra Dey* (2) and in *Jiwan Ram* v. *Jagernath Sahu* (3). No ruling to the contrary was shown on behalf of the respondent. I consider therefore that the order of remand by the lower court is incorrect as there is no section of the Limitation Act which can be applied to cover the periods in question. Some of these rulings pointed out that the law requires that when the revision was dismissed by the High Court on 2nd November, 1934, the plaint should have been filed in the court in Meerut on the 3rd November, 1934, at the latest. This may seem to be rather a hardship as no interval of time is allowed by the Act, but a plaintiff has the remedy of taking the precaution of filing his plaint in the proper court during the period when his revision is pending in the High Court. If the plaintiff gambles on the chance of his revision succeeding, he cannot expect the law to allow him a further period in which he can take time to take his plaint to the proper court For these reasons I consider that the suit filed in the court of Meerut on the 19th November, 1934, was beyond time as the suit related to a partnership which began on the 1st April, 1927, and terminated on the 31st March, 1928, and for which the period of limitation is three

(1) (1919) 30 C.L.J. 522. (2) (1913) 18 Indian Cases 121.
(3) (1937) 167 Indian Cases 941.

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years. The courts below therefore should have held that the suit was time barred and the suit should have been dismissed. Accordingly I allow the appeal and I order the dismissal of the suit on the ground of limitation with costs in all courts in favour of the defendant.

Before Mr. Justice Collister and Mr. Justice Bajpai

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JAIWANTI (PLAINTIFF) *v.* ANANDI DEVI (DEFENDANT)*

Hindu law—Inheritance—Jains—Custom—Stridhan—*Daughters claiming mother's* stridhan—*Preference as between married and unmarried daughters*—"Bhadrabahu Samhita", *authority of.*

In the absence of proof of special custom varying the ordinary Hindu law of inheritance, that law is to be applied to Jains. Accordingly, unless a custom to the contrary is proved, among Jains an unmarried daughter will inherit the *stridhan* property of her mother in preference to a married daughter.

The "Bhadrabahu Samhita", professing to be a digest of Jain law, is of doubtful authority.

Mr. *Shiva Prasad Sinha*, for the appellant.

Mr. *Baleshwari Prasad*, for the respondent.

COLLISTER and BAJPAI, JJ.:—This is a plaintiff's appeal. The plaintiff is Mst. Jaiwanti and she is the daughter of one Mst. Kapuri, who died in July, 1921, leaving certain *stridhan* property. The defendant, Mst. Anandi Devi, is another daughter of Mst. Kapuri. The plaintiff's case was that she as one of the daughters of Mst. Kapuri deceased was entitled to a half share in the latter's *stridhan* and she prayed for a declaration to the above effect. She alleged that at the death of her mother she was unmarried; but alternatively she claimed that even if the contrary were held to be proved, she would have an equal right with her unmarried sister under the law applicable to Jains, to which community the parties belong.

*Second Appeal No. 1348 of 1934, from a decree of J. N. Kaul, Civil Judge of Mainpuri, dated the 30th of August, 1934, confirming a decree of S. C. Chaturvedi, Munsif of Mainpuri, dated the 6th of September, 1933.