APPELLATE CIVIL.

Before Mr. Justice Muhammad Raza.

DEEP SINGH (DEFENDANT-APPELLANT) *v.* RAGHUNATH SINGH (PLAINTIFF-RESPONDENT.)*

1930 *July*, 29.

Limitation Act (IX of 1908), section 5—Amendment of decree suo moto *by court—Appeal filed beyond time but in time from date of amendment—Extension of time under section 5 of Limitation Act, when to be allowed.*

It is not every amendment in a decree which has been made *suo moto* by the court that entitles a party to claim an extension of time under the second paragraph of section 5 of the Limitation Act. Whether there is sufficient cause for extension must depend on the circumstances of each individual case. If the amendment has no relation to the grounds upon which the validity of the decree is sought to be challenged in appeal, such appeal should not be admitted out of time. On the other hand if the grounds on which the appeal is based are intimately connected with the amendment of the decree, or if the grounds are directed against the decree only in so far as it has been amended, the court should exercise in its favour the discretion vested in it by paragraph (2) of section 5 of the Limitation Act. *Sheikh Golab* v. *Maharani Janki Kuer* (1), and *Brojo Lal* v. *Taraprasanno* (2), followed.

Amar Chandra Kundu v. *Asad Ali Khan* (3) and *Bohra Gajadhar Singh* v. *Basant Lal*, and others (4), referred to.

Mr. *K. P. Misra*, for the appellant.

Mr. *K. N. Tandon*, for the respondent.

RAZA, J.:—These two appeals (Nos. 10 and 11 of 1930) arise out of two suits brought by one Raghunath Singh against Deep Singh and others for his share of profits under section 108, clause (15) of the Oudh Rent Act.

The decrees in both the suits were passed by the first court on the 22nd of December, 1928. The records show that judgments were pronounced in both the

*Second Rent Appeal No. 10 of 1930, against the decree of Saivid Asghar Hasan, District Judge of Hardoi, dated the 4th of January, 1930, confirming the decree of K. S. Molvi Mohammad Shahzad Ali Khan, Honorary Assistant Collector, First Class, Shahabad, Hardoi, dated the 22nd of December, 1928.

(1) (1920) 5 P.L.J., 472.
(2) (1905) 3 C.L.J., 188.
(3) (1905) I.L.R., 32 Calc., 908.
(4) (1920) 19 A.L.J., 152.

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suits in the presence of the plaintiff Raghunath Singh and the defendants, Deep Singh and Dambar Singh, on the 22nd of December, 1928. In one suit the plaintiff's claim was decreed against Deep Singh alone for Rs. 98-14-9 with interest and costs. In the other suit the plaintiff's claim was decreed for Rs. 61-4-3 against Deep Singh, Dambar Singh and Arjun Singh (as detailed below), with interest and costs:—

	Rs.	a.	p.
Deep Singh	8	14	9
Dambar Singh	33	12	2
Arjun Singh	18	9	4

It is thus clear that Deep Singh and Dambar Singh came to know on the 22nd of December, 1928, for what sums decrees were passed against them by the learned Assistant Collector. However applications for copies of judgments and decrees in both the suits were not presented before the 31st of January, 1929. These applications were made on that date after the period for filing an appeal had expired. It appears that decrees were not correctly prepared in these suits owing to some office mistake. The mistake was discovered by the record room officials when the records were consigned to the record room. The records were then sent back to the court of the learned Assistant Collector for correction of the mistakes. The decrees were then amended by the learned Assistant Collector on the 28th of February, 1929. The state of the decrees as they stood before the amendment and as they stood after the amendment was as follows:—

"*First case.*

Original decree for Rs. 61-4-3. Amended decree for Rs. 98-14-9.

Second case.

Original decree for Rs. 98-14-9. Amended decree for Rs. 61-4-3."

As observed by the learned Judge there was absolutely no mistake in the preparation of the decrees. "The mistake crept in only in this way that the decree

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which should have been attached to the file of the first case was attached to the file of the second case and *vice versa*, with of course the particulars about the number of the suit being the same in the decree to the file of which it was attached."

It is not disputed that if limitation is to be taken to commence from the 22nd of December, 1928, both the appeals were barred by time, but if the limitation period is calculated from the 28th of February, 1929, then both the appeals, which were filed on the 16th of March, 1929, were within time.

The point for determination is whether the circumstances in which the decrees were amended amount to "sufficient cause" for extending the period of limitation within the meaning of section 5 of the Indian Limitation Act. This point has been decided against the appellants Deep Singh and Dambar Singh by the learned District Judge. He has, therefore, dismissed their appeals.

Deep Singh alone has filed appeal No. 10 and Deep Singh and Dambar Singh jointly have filed appeal No. 11 in this Court.

In my opinion there is no substance in these appeals.

The learned Judge was perfectly right in holding that no sufficient cause has been shown under section 5 of the Limitation Act for extending the period of limitation for appeals in these cases. So far as I see it is quite clear that Deep Singh and Dambar Singh had no intention to appeal, before the 31st of January, 1929. The cases were decided and the judgments pronounced in their presence on the 22nd of December, 1928, but no application for copies was made within the period of limitation. It is true that the decrees were not correctly prepared in these cases owing to the office mistake, but the fact remains that the orders passed by the learned Assistant Collector as to the sums for which decrees were passed in plaintiff's favour were quite clear. Deep Singh

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and Dambar Singh had surely come to know on that very date (22nd December, 1928) for what sums decrees were passed against them. If they intended to appeal from the decrees passed by the learned Assistant Collector, the application for copies should have been filed within the period of limitation, but this was not done. The decrees were of course amended under the circumstances mentioned above, but they were not amended on their applications. The nature of the amendment has already been noted above. It was urged on behalf of the appllants in the lower court that the decrees and the judgments of the learned Assistant Collector were post-dated, but this allegation was not upheld by the learned Judge. This point has not been urged before me at the hearing of these appeals. I agree with the learned Judge that the allegation in question is not satisfactorily made out. The learned Judge has referred to the authorities: *Amar Chandra Kundu* v. *Asad Ali Khan* (1), *and Bohra Gajadhar Singh* v. *Basant Lal and others* (2), which were considered by him in deciding the question of limitation. The respondent's learned Counsel has referred also to the case of *Sheikh Golab* v. *Maharani Janki Kuer* (3). The following observations were made by MULLICK, J. in his judgment in that Full Bench case:—

> "In the present case the amendment was made not on an application but by the court on its own motion. In so far as the decision was a judgment the Court was competent to correct of its own motion only clerical or arithmetical errors or make good accidental slips or omissions and therefore the amendment ought not in my opinion to be regarded as an amendment of the judgment. The court had no power to alter a judgment except in these limited

(1) (1905) I.L.R., 32 Calc., 908. (2) (1920) 19 A.L.J., 152.
(3) (1920) 5 P.L.J., 472.

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matters. But as under its inherent powers the court was always competent to bring its decree into conformity with the judgment the amendment may I think be treated as an amendment of a decree in regard to which limitation for the purpose of execution began to run from the date of the amendment. But the Limitation Act of 1908 did not make any amendment in Article 156 corresponding to the amendment in article 182 and the question is whether the same principle is to be applied to appeals. In my opinion the answer is in the negative and the rule laid down in *Brojo Lal* v. *Taraprasanno*(1) will govern the present case. As has been observed by their Lordships of the Calcutta High Court in that case it is not every amendment in a decree which has been made *suo moto* by the court that entitles a party to claim an extension of time under the second paragraph of section 5 of the Limitation Act. Whether there is sufficient cause for extension must depend on the circumstances of each individual case. If the amendment has no relation to the grounds upon which the validity of the decree is sought to be challenged in appeal, such appeal should not be admitted out of time. On the other hand if the grounds on which the appeal is based are intimately connected with the amendment of the decree, or if the grounds are directed against the decree only in so far as it has been amended, the Court should exercise in its favour the discre-

(1) (1905) 3 C.L.J., 188.

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tion vested in it by paragraph (2) of section 5 of the Limitation Act."

I take the same view. In my opinion no sufficient cause has been shown for extension of the period of limitation for appeals in these cases. The grounds of appeal in these cases were not based upon the form which the decrees had taken after the amendment.

Hence I dismiss both the appeals with costs.

Appeal dismissed.

MISCELLANEOUS CIVIL.

Before Mr. Justice Wazir Hasan, Chief Judge and Mr. Justice A. G. P. Pullan

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July, 29.

IN THE MATTER OF THE ENROLMENT OF AN ADVOCATE.*

Enrolment of advocates—Chief Court Rules, chapter III—Advocate reading in chamber before being called to the Bar—Reading in chamber, whether to be before or after being called to the Bar.

The rule embodied in chapter 3 of the Rules of the Chief Court of Oudh regarding persons who may apply to be admitted as advocates of that court does not prescribe the reading in chambers to commence after a person has been called to the Bar. The words used in that rule indicate that reading in chambers may be made before the call to the Bar, during the course of attendance at the lectures for the law examination, or after the call at the Bar. The object of rule is to prescribe the necessity of reading in the chambers of a practising Barrister or Advocate irrespective of the fact whether it is done before or after the call to the Bar.

Messrs. *R. F. Bahadurji* and *A. Hasan*, for the applicant.

The Government Advocate (Mr. *H K. Ghose*), for the Bar Council

*Civil Miscellaneous Application No. 270 of 1930 for enrolment as an Advocate.