

stands on a different footing from a plaint dealt with under section 54 of the Code, and we may observe that the view of the Allahabad High Court, as expressed in that case, has not been adopted in this Court. In the case of *Syud Ambur Ali v. Kali Chand Doss* (1) it was held that "The Deputy Registrar has no authority to make an order returning a petition of appeal when the stamp fee paid upon it is insufficient. The right course for that officer, if his requirements as to stamps are not complied with, is to lay the matter before the Court. But if the appellant is ready to pay what is required, then, whether the time for filing the appeal has expired or not, the Deputy Registrar is bound to receive it if it was originally presented in time." And in a recent case [*Moti Sahu v. Chhatri Das* (2)] decided by Prinsep and Banerjee, JJ., on the 10th May last, this Court did not follow the decision of the Allahabad Court, and it was held with reference to a plaint, and in circumstances similar to those in the present case, that the suit should be regarded as having been instituted on the day that the plaint was originally presented, and that it was not barred by the law of limitation.

Upon these considerations we think that the decision arrived at by the Court below is right, and this appeal should be dismissed with costs.

Appeal dismissed.

A. A. C.

PRIVY COUNCIL.

MANICK CHAND (DEFENDANT) *v.* HIRA LAL (PLAINTIFF).

[On appeal from the Court of the Judicial Commissioner of Oudh.]

*Partition—Partition among shareholders in zamindari villages—
Construction of agreement—Custom.*

On a dispute among proprietors of shares in zamindari villages as to the respective amounts of the holdings till then undivided, to which they were entitled, a compromise made by their common ancestor's five sons, of

* *Present:* LORDS WATSON and MORRIS, SIR R. COUCH, and LORD SHAND.

(1) 24 W. R., 258.

(2) I. L. R., 19 Calc., 780.

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whom the plaintiff's father was the eldest, had been filed in proceedings prior to this suit. This was construed to have assigned to the plaintiff's father an additional share, according to a custom recorded in the *khehut* at settlement, in virtue of which the eldest brother was entitled to a share greater than that allotted to the others,—a right termed "*hakh jethansi*."

APPEAL from a decree (5th April 1888) of the Judicial Commissioner, modifying a decree (31st December 1886) of the District Judge of Sitapur.

The suit was brought in 1885 by the present respondent against his two brothers, all three being sons of Janki Pershad, who died in June 1882, and against two uncles, Janki Pershad's brothers, and two cousins, sons of the latter. The plaintiff sued to establish his right to a one-fifth share of four villages formerly belonging to Khushal Ram, his grandfather. The villages were, as the *khewuts* on the record showed, zamindari, or those in which ancestral right was the measure of the amount of the undivided holding of each co-sharer. As to the villages mentioned in their Lordships' judgment, the plaintiff alleged that by a custom, which also was recorded in the *khewuts* of the villages, a special share had descended to his father Janki Pershad as eldest of the sons of Khushal Ram, and that by agreement among the co-sharers certain villages were set apart as representing this special share. The District Judge found in favour of that contention. The Judicial Commissioner considered that one of the villages had been allotted to Janki Pershad as the portion of the eldest son in "*hakh jethansi*," but that the plaintiff was not entitled to the others.

The custom recorded in the *khehut* was that the eldest member of the family had a right on partition to "*jethansi*," (1) which was calculated by setting apart for him five per cent. of the whole property to be divided, and then apportioning the residue equally among the sharers *per stirpes*; and, in practice, as far as possible separate villages were given by way of the extra portion. Janki Pershad was the eldest son and managing member, who had also added to the property. After his death disputes arose as to partition, and a suit was brought in 1882 in the Court of the

(1) Wilson's Glossary, p. 237, gives "*Jethans*" as meaning "the share or portion of the eldest born."

Extra Assistant Commissioner in Sitapur, in the course of which deeds and a petition containing the terms of a compromise, dated 9th November 1882, were filed by the parties.

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Mr. *J. D. Mayne* for the appellant, argued that the decision of the first Court was correct.

The respondent did not appear.

Their Lordships' judgment was delivered by

SIR R. COUCH.—This case has reference to a dispute between two brothers, the sons of one Janki Pershad, as to the right of the younger brother, the respondent, to a half share of three villages called Bairampur, Ichna, and Dubawan. The District Judge decided that the elder brother, Manick Chand, was entitled to all the three villages, to the exclusion of his younger brother, Hira Lal. Upon appeal the Judicial Commissioner reversed that decision so far as it related to two of the villages, Dubawan and Ichna, and decided that Manick Chand was entitled to one village, Bairampur, as *jethansi*, and that Hira Lal was entitled to share in the other two villages.

The case depends upon the effect of a family arrangement which is stated in a petition presented on the 8th November 1882 to the Court of Hazari Lal, Extra Assistant Commissioner of Sitapur, and in the proceedings thereon on the 9th November. In order to explain the nature of the arrangement it should be stated that Janki Pershad was one of five brothers. One of them, Atma Ram, is now represented by Lalta Pershad; another is Bhawani Pershad; the third, Thakur, is represented by Saonlai Lal, who was adopted by him, but who was a son of Janki Pershad; the fourth is Chote Lal.

The questions which were the subject of the compromise had arisen in the lifetime of Janki Pershad, who died in June 1882, a few months before the compromise was actually entered into. This is important, as showing that what the parties were agreeing about was, not the right of Manick Chand as the eldest son of Janki Pershad as against the other members of the family, but the right of Janki Pershad and the claim which he had upon the other members of the family on account of his services in managing the property, and in acquiring other property, and so increasing the value of the family estate.

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The petition states that a dispute having arisen between Bhawani Pershad, Chote Lal, and Lalta Pershad, on the one side, and Manick Chand, Hira Lal, and Saonlai Lal, on the other side, and a case about the matter being before the Court of the Extra Assistant Commissioner of Sitapur, the above-named parties had, at the request of their kinsmen and of certain neighbouring zamindars, settled the matter amongst themselves, upon the terms that "out of the whole lot of zamindari and mortgaged villages in parganas Chandra and Aurangabad, two entire villages, viz., village Ichna . . . and village Dubawan . . . shall be given with proprietary right to Manick Chand, the eldest son of Maharaj Janki Pershad, deceased, to the exclusion of others and over and above his shares . . . As to the rest of the villages in parganas Chandra and Aurangabad it has been determined that *jethansi* dues shall be levied in them at the rate of 5 bighas per Rs. 100, or at the cash rate of Rs. 5 per cent. on the revenue, the village Bairampur . . . becoming included in Bai Kuian pargana Aurangabad. The revenues and profits of this village shall be at the disposal of Manick Chand, no other party shall have anything to do with it. Should the area of Bairampur be found wanting in payment of *jethansi* dues at the rate of 5 bighas per Rs. 100, the deficiency shall be made good from other villages in the manner to be proposed . . . mentioned above."

The question is, what was meant by the statement that the villages, Ichna and Dubawan, were given "with proprietary right to Manick Chand, to the exclusion of others, and over and above his shares." On reference to a subsequent passage in the petition, it is clear that the shares there alluded to were the shares of Manick Chand, as representing his father Janki Pershad, and the shares of the other four brothers. It says: "All the rest of the land belonging to each village . . . shall form one whole, and shall be divided into five equal shares amongst the undermentioned shareholders: 1. Bhawani Pershad; 2. Chote Lal; 3. Lalta Pershad; 4. Manick Chand, Hira Lal; 5. Saonlai Lal." There is no allusion to any question having arisen between Manick Chand and Hira Lal regarding their respective shares in the property of their father Janki Pershad.

Further on, in the petition, the following important statement that Hira Lal, named there as Hazari Lal, but evidently in mistake for Hira Lal, "states that he has a share in the entire share of Manick Chand, including the *jethansi* right, and Manick Chand states that he (Hazari Lal) has no share in *jethansi*, he has share in other properties." Hira Lal claimed there more than he was entitled to because the *jethansi* being the right of the elder brother he could have no share in it, but the importance of the statement lies in the fact that Manick Chand said that Hira Lal had no share in the *jethansi*, but that he had a share in other properties. These words would apply to the two villages, Ichna and Dubawan, which are not stated to be given as *jethansi* to Manick Chand, but as in proprietary right. That the parties were not dealing with any rights, as between Manick Chand and Hira Lal, in the two villages which were given in proprietary right really on account of Janki Pershad the father, is apparent from another passage in the petition, where it is said:—"Every co-sharer should repay the debts in proportion to his share, or should become responsible for its payment, according to his share, which, in the case of Manick Chand, would include *jethansi*. The debts due to co-sharers, including *jethansi*, might also be divided out in proportion to shares, that is to say, in calculating the proportion, the *jethansi* and other villages awarded to Manick Chand, in excess of other shares, will be taken into account." The words "in excess of other shares" must mean, not in excess of any share which Manick Chand had as between himself and Hira Lal, but in excess of the shares of the other four brothers, showing that what the parties were dealing with in the compromise was not a question between Manick Chand and Hira Lal as to their shares, but the division of the property between the five brothers, one being given to the sons of Janki Pershad as representing him, and entitled to succeed to the property as his sons.

This view is further supported by another petition, presented to the Court on the 8th November 1882, but in the heading dated by mistake the 8th January 1882, in which it is said, in almost similar language to that quoted above: "A dispute regarding division of shares in all villages held in zamindari right, and by mortgage in village, pargana, and tahsil Chandra, all villages

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belonging to Bai Kuian, grant in pargana Aurangabad, tahsil Muhamdi, having taken place among the parties, viz., Bhawani Pershad, Chote Lal, sons of Khushal Ram, and Lalta Pershad, son of Atma Ram, on the one side, and Manick Chand and Hira Lal, sons of Janki Pershad, and Saonlai Lal, adopted son of Thakur Pershad, * * * on the other side, a suit is pending in the Court of Munshi Hazari Lal, Extra Assistant Commissioner, district Sitapur." That shows that even before this compromise a suit had been commenced, and was pending, between the representatives of three of the sons on the one side and Manick Chand and Hira Lal, sons of Janki Pershad, and Saonlai Lal, the adopted son of Thakur Pershad, on the other side, and obviously pointed to the nature of the dispute which had arisen, and which was to be compromised.

The construction of the arrangement come to by these petitions appears to their Lordships to be that it was not intended thereby to deal with the rights of Manick Chand and Hira Lal as between each other, but with the rights of Manick Chand and Hira Lal as representing their father Janki Pershad, and the rights of the other brothers. The Judicial Commissioner appears to have rested his judgment upon Manick Chand's statement that Hira Lal had no share in *jethansi*, but had a share in other properties. Probably it would not be correct to give so much effect as he has done to that statement; but it is in accordance with the contents of these petitions, and their Lordships are of opinion that the decision of the Judicial Commissioner, that Hira Lal was entitled to a share in the two villages, is the right decision, and they will humbly advise Her Majesty to dismiss the appeal.

Appeal dismissed.

Solicitors for the appellant: Messrs. Young, Jackson, and Beard.

C. B.