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Srivastava,
J.

to me quite clear that in the absence of any specific provision relating to a claim for arrears of lambardari dues it must be governed by the general rule of limitation laid down in section 129 of the Oudh Rent Act. I am accordingly of opinion that the claim for arrears of lambardari dues for the years 1337, 1338 and 1339 Fasli was barred by limitation. The amount decreed by the lower Court should therefore be reduced by a sum of Rs.28-8.

The result is that the appeal is allowed in part, the decree of the lower Court is modified and the amount decreed is reduced by a sum of Rs.28-8. In the circumstances I make no order as to the costs of the appeal.

Appeal partly allowed.

APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava
 and Mr. Justice E. M. Nanavutty*

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 March, 13

SITLA BAKHSH SINGH (DEFENDANT-APPELLANT) v.
 MAHABIR PRASAD (PLAINTIFF-RESPONDENT)*

Transfer of Property Act (IV of 1882), sections 130 and 136—Contract Act (IX of 1872), section 23—Bond executed in favour of two persons—Assignment by them in favour of a Special Magistrate and Assistant Collector, whether void—Death of one of the assignors—Suit by the other on the basis of the bond, whether lies—Civil Procedure Code (Act V of 1908), Order I, rule 10—Assignment of a bond in favour of a person, whether void—Suit by assignee, whether a suit by a wrong person—Substitution under Order I, rule 10, if proper—Second appeal—Costs—Lower appellate Court disallowing certain costs—High Court, whether should interfere with the exercise of discretion in allowing costs.

Where a bond executed in favour of two persons is assigned by them in favour of a Special Magistrate and Honorary Assistant Collector, *held*, that the assignment is altogether void in law and no rights pass from the transferor to the transferee

*Second Civil Appeal No. 120 of 1934, against the decree of Mr. K. N. Wanchoo, i.c.s., District Judge of Rae Bareilly, dated the 10th of January, 1934, modifying the decree of Babu Bhagwati Prasad, Subordinate Judge of Partabgarh, dated the 20th of February, 1933.

and if one of the transferors dies in the meantime, the other, who becomes the sole owner of the bond, has undoubtedly a right to maintain a suit on the basis of it.

If assignment of a bond in favour of a person is void and the assignee institutes a suit on the basis of the bond, it is a suit in the name of a wrong person through a *bona fide* mistake and the name of the assignor can be substituted for him as plaintiff under Order I, rule 10, C. P. C. *Sheoraj Kuar v. Hari Kishan* (1), *Raghubans Kuar v. Hashmat Ali* (2), *Krishna Boi v. The Collector and Government Agent, Tanjore* (3), and *Hughes v. The Pump House Hotel Company, Ltd.* (4), referred to.

The awarding of costs is a matter of discretion and if the lower appellate Court, in the exercise of its discretion, refuses to allow a certain sum of costs, the High Court should not interfere with the exercise of that discretion in second appeal.

Mr. *Ghulam Hasan*, for the appellant.

Messrs. *Radha Krishna Srivastava* and *S. N. Srivastava*, for the respondents.

SRIVASTAVA and NANAVUTTY, JJ.:—This is a defendant's appeal against the decree dated the 10th of January, 1934, of the learned District Judge of Rae Bareilly modifying the decree dated the 20th of February, 1933, of the learned Subordinate Judge of Partabgarh.

The defendant-appellant on the 25th of June, 1930, executed a bond in favour of two persons Bindeshri Prasad and Mahabir Prasad. On the 14th of October, 1930, Bindeshri Prasad and Mahabir Prasad executed a deed of assignment in respect of the aforesaid bond in favour of Pandit Shiam Bihari Misra, a Special Magistrate and an Honorary Assistant Collector in the Partabgarh District. When Pandit Shiam Bihari Misra instituted a suit on the basis of the bond dated the 25th of June, 1930, the defendant-appellant pleaded that Pandit Shiam Bihari Misra had no right to enforce the bond by reason of the provisions of section 136 of the Transfer of Property Act. Pandit Shiam Bihari Misra did not contest the plea but made an application under Order I, rule

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(1) (1900) 3 O.C., 347.

(2) (1904) O.C., 78.

(3) (1907) I.L.R., 30 Mad., 419.

(4) (1902) 2 K.B., 485.

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10 of the Code of Civil Procedure jointly with Mahabir Prasad and in this application it was prayed that the name of the former should be removed and the name of the latter should be substituted in his place as plaintiff. The application was granted, and the trial of the suit proceeded with Mahabir Prasad as plaintiff, and a decree was ultimately passed in his favour. This decree was upheld on appeal by the learned District Judge only with this modification namely that Mahabir Prasad was disallowed the amount of court-fee paid on the plaint which was taxed as part of the costs decreed to him against the defendant.

The first contention urged by the learned counsel for the defendant-appellant is that Mahabir Prasad was not entitled to prosecute the claim on the basis of the bond in suit after execution of the sale deed by him in favour of Pandit Shiam Behari Misra. It is argued that under section 130 of the Transfer of Property Act the transfer of an actionable claim by the execution of an instrument in writing is complete and effectual upon the completion of that instrument and that thereafter all the rights and remedies of the transferor vest in the transferee. The argument proceeded that in view of the provisions of section 130 it must be taken that all the rights in respect of the bond in suit became vested in Pandit Shiam Behari Misra and therefore the suit could not be maintained by Mahabir Prasad. We are of opinion that this argument is fallacious. The provisions of section 130 which have been relied upon presuppose a valid transfer. Section 136 clearly forbids dealings in an actionable claim by a Judge, legal practitioner or officer connected with any Court of Justice. Section 23 of the Contract Act shows that if the consideration or object of an agreement is one forbidden by law or is of such a nature that, if permitted, it would defeat the provisions of any law, or is opposed to public policy then the consideration or object must be held to be unlawful and that the agreement in such a case is void. Thus we are clearly of

opinion that the assignment made by Mahabir Prasad and Bindeshri Prasad in favour of Pandit Shiam Bihari Misra was altogether void. The result of it was that no rights passed from the transferor to the transferee. As Bindeshri Prasad had died in the meantime therefore Mahabir Prasad who had become the sole owner of the bond had undoubtedly a right to maintain the suit on the basis of it.

Next it was argued that the order for substitution made under Order I, rule 10 of the Code of Civil Procedure was illegal inasmuch as it could not be said that the suit had been instituted in the name of a wrong person through a *bona fide* mistake. That it was instituted in the name of a wrong person does not in our opinion admit of any doubt. Having found that the assignment in favour of Pandit Shiam Bihari Misra was void it is clear that he had no right to maintain a suit on the basis of the bond. In fact section 136 of the Transfer of Property Act clearly provides that no Court of justice shall enforce any actionable claim at the instance of such a person. It therefore follows that the suit which was instituted by Pandit Shiam Bihari Misra was instituted by a wrong person. As to whether this was done through a *bona fide* mistake or not both the lower Courts have found on this point in favour of the plaintiff. The fact that Pandit Shiam Bihari Misra did not contest the plea raised by the defendant about the bar of section 136 of the Transfer of Property Act seems to show that he had accepted the assignment and instituted the suit in ignorance of the provisions of section 136 of the Transfer of Property Act. In the circumstances we can see no sufficient ground to disagree with the concurrent finding of the two Courts below on this point. The learned counsel for the appellant has relied on two decisions of the late Court of the Judicial Commissioner of Oudh in *Sheoraj Kuar v. Hari Kishan* (1) and *Rani Raghubans Kuar v. Hashmat Ali* (2) as showing that Order I, rule 10 could not be properly applied to

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the present case. The learned counsel for the plaintiff-respondent on the other hand has referred us to the decisions in *Krishna Boi v. The Collector and Government Agent, Tanjore* (1) and *Hughes v. The Pump House Hotel Company, Ltd.* (2). It seems unnecessary for us to discuss these cases because each of them proceeds on its own special facts. It will be sufficient to say that there were circumstances in this case which in our opinion could well justify the Courts below in coming to the conclusion that Pandit Shiam Bihari Misra acted under a *bona fide* mistake and that the appellant has failed to satisfy us that the conclusion arrived at by them is incorrect.

These being the only points urged in the appeal it must fail.

A cross-objection has also been filed by the plaintiff-respondent questioning the order of the lower appellate Court disallowing him the amount of court-fee which had been paid on the plaint. We are unable to accept the principle that the taxation of any item of costs is to depend upon proof of that item of expenditure having been incurred by the party concerned personally. But the awarding of costs is a matter of discretion, and the lower appellate Court having in the exercise of its discretion refused to allow the court-fee paid on the plaint to Mahabir Prasad, we do not think we should interfere with the exercise of that discretion in second appeal.

The result is that we dismiss both the appeal and the cross-objections with costs.

Appeal dismissed.

(1) (1907) I.L.R., 30 Mad., 419. (2) (1902) 2 K.B., 485.