

## APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan and Mr. Justice  
R. L. Yorke

1938  
July, 27

RAM DASS (APPELLANT) v. CHHEDI LAL AND OTHERS  
(RESPONDENTS)\*

*Second Appeal—Findings of fact—Court's jurisdiction to entertain second appeal against erroneous findings of fact—Oudh Courts Act (IV of 1925), section 12(2)—Limitation Act (IX of 1908), section 4—Section 4, Limitation Act, whether applies to appeals under section 12(2), Oudh Courts Act—Limitation for appeal under section 12(2) expiring on a holiday—Appeal filed on the day the court reopens, whether within limitation.*

There is no jurisdiction to entertain a second appeal on the ground of erroneous findings of fact however gross the error may seem to be. *Wali Mohammad v. Mohammad Bukhsh* (1) and *Secretary of State for India in Council v. Rameswaram Devasthanam* (2) followed.

The provisions of section 4 of the Indian Limitation Act are applicable to an application under section 12(2) of the Oudh Courts Act. Where, therefore, the limitation prescribed for an appeal under section 12(2) expires on a day when the court is closed the appeal may be preferred on the day that the court reopens.

Mr. *Hyder Husain*, for the appellant.

Mr. *Nasir Ullah Beg*, for the respondents.

ZIAUL HASAN and YORKE, JJ.:—This is an appeal under section 12(2) of the Oudh Courts Act against a decision of a Judge of this Court sitting singly.

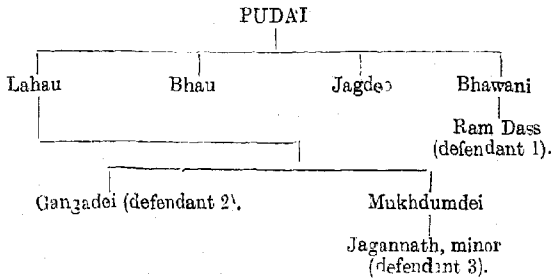
The suit of the plaintiff, who is respondent No. 1 before us was for possession of a certain house on the allegation that he had purchased the house from Musammat Gangadei and Jagannath to whom the house had been gifted by the previous owner Lahau. The

\*Section 12(2) Oudh Courts Act Appeal No. 12 of 1937, against the decree of the Hon'ble Mr. Justice E. M. Nanavutty, Judge of the Chief Court of Oudh, dated the 5th of February, 1937, setting aside the decree of Mr. Kishan Lal Kaul, Civil Judge of Sultanpur, dated the 31st of January, 1935, reversing the decree of Mr. G. M. Frank Agarwal, Munsif of Sultanpur, dated the 12th of May, 1934.

(1) (1929) L.R., 57 I.A., 86.

(2) (1934) L.R., 61 I.A., 163.

following pedigree will make the facts of the case clear:



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The plaintiff claims to have purchased the house from Musammat Gangadei and Jagannath, who were defendants 2 and 3 respectively to the suit, on the 11th of September, 1933, and Lahau was said to have made the gift of the house on the 24th of July, 1926. The defence of defendant No. 1, who is the appellant before us, was that the house did not belong to Lahau but belongs to his father Pudai, that it was sold by auction by court and was purchased by one Madan Chand who in his turn sold it to Beni, maternal uncle of the defendant.

The main questions for determination in the suit were whether the house originally belonged to Lahau or to Pudai and whether the plaintiff was owner of the house by virtue of his purchase.

The trial court held that the house belonged originally to Lahau and that the plaintiff was entitled to a decree on account of his purchase of the house from defendants 2 and 3 in whose favour the house had been gifted by Lahau. In appeal by the defendant No. 1 the learned Civil Judge of Sultanpur reversed the trial court's findings on all these points and held that the house belonged to Pudai, that the plaintiff failed to prove the sale-deed in his favour and that the deed of gift said to have been executed by Lahau in favour of defendants 2 and 3 had not also been proved. In consequence of these findings the appeal was allowed by the learned Civil Judge and the plaintiff's suit dismissed.

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The plaintiff filed a second appeal in this Court and a learned Judge of this Court by his judgment dated the 5th of February, 1937, restored the findings of the trial court and decreed the suit. Hence this appeal by defendant No. 1.

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It is argued before us that all the three findings of the first appellate court, namely, that the deed of gift in favour of the plaintiff's vendors was not proved, that the sale set up by the plaintiff was also not proved and that the house belonged to Pudai and not to Lahau were findings of fact and that the learned Judge of the second appellate court had no jurisdiction to reverse those findings.

The findings of the first appellate court that the deed of gift exhibit 2 was not proved was based on the grounds that, in the first place, neither was the original deed of gift, produced nor its loss sufficiently made out so that no secondary evidence of the deed was admissible and, in the second place, that the deed was not properly attested as required by section 123 of the Transfer of Property Act. The plaintiff summoned the deed from Musammat Makhduradei, guardian of Jagannath minor, one of the vendors, but she stated in court that to her knowledge no deed of gift had been executed by Lahau. In these circumstances the trial court was of opinion that the plaintiff was entitled to produce a certified copy of the deed. In appeal the learned Civil Judge was however of opinion that the plaintiff should have summoned the deed from the other vendor before he could be entitled to produce secondary evidence of it. The learned Judge of this Court agreed with the view taken by the first court and held that the certified copy of the deed produced by the plaintiff was legally admissible. The second ground of the learned Judge of the first appellate court was based on the facts that one of the attesting witness Fateh Mohammad did not appear either to have signed the deed of gift or to have put a mark on

it by way of attestation, and that he did not state either that the deed was executed by Lahau in his presence or that Lahau acknowledged its execution before him. The learned Judge of this Court agreed with the view of the trial court that the evidence of Fateh Mohammad and the other attesting witness Shambhu Nath was sufficient to prove the deed of gift in question.

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As to the execution of the deed of sale in favour of the plaintiff one Jan Mohammad a marginal witness of the deed stated that the deed was executed by the ladies in his presence for a sum of Rs.100 and that he signed the deed as a witness. The finding of the learned Judge of the first appellate court was based on the fact that the record of Jan Mohammad's evidence did not show that the deed in question was shown to him at the time that he deposed about it. On this point also the learned Judge of this Court agreed with the Munsif that Jan Mohammad's evidence was sufficient to prove the sale-deed.

We are not prepared to accept the contention of the learned counsel for the appellant that in the circumstances narrated above, the findings that the deed of gift and sale had not been proved were questions of fact but it appears to us that the finding on the third question, namely, whether the house belonged to Lahau or his father Pudai was a pure question of fact and as such it was not within the jurisdiction of the learned Judge who heard the second appeal to reverse the first appellate court's finding on that point. It was held by their Lordships of the Judicial Committee in *Wali Mohammad v. Mohammad Bakhsli* (1) that there is no jurisdiction to entertain a second appeal on the ground of erroneous findings of fact however gross the error may seem to be. This decision was confirmed by their Lordships in *Secretary of State for India in Council v. Rameswaram Devasthanam* (2). Both the lower courts gave their reasons for their findings on the

(1) (1929) L.R., 57 I.A., 86.

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question whether the house belonged to Lahau or to Pudai, the first court having relied mainly on the khasra numbers and the first appellate court on the boundaries of the house in suit. It cannot therefore in the circumstances be said that the finding of the first appellate court on the question of ownership of the house was incorrect but even if it was incorrect, this Court had no jurisdiction according to the pronouncements of their Lordships of the Judicial Committee just referred to to reverse that finding.

We therefore allow this appeal with costs, set aside the decree of the learned Judge of this Court and restore that of the first appellate court.

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This appeal was heard on the 25th July and judgment pronounced on the same date. The typed copy of the judgment was ready yesterday but before it was signed by us, the learned counsel for the respondent asked us to give him time to show that the application under section 12(2) of the Oudh Courts Act was time-barred. We allowed his prayer and heard him and the learned counsel for the appellant on the question of limitation.

The facts are that the judgment appealed from was pronounced by the learned Judge of this Court on the 5th of February, 1937. Under Chapter 12, rule 7 of the Rules of this Court an application under section 12, sub-section 2 has to be presented to the Registrar within thirty days from the date of the judgment unless the Judge in his discretion, on good cause shown, grants further time for its presentation. In the present case limitation under this rule expired on the 7th of March, 1937, and it appears to have been put up before the learned Judge concerned on the next day. On that date the application was granted. The learned counsel for the respondent argues that the application was presented a day beyond time but we are of opinion that having regard to the provisions of section 4 of the

Indian Limitation Act, the application could be presented on the 8th of March, 1937 as the 7th of March was a Sunday. In fact, the office made a report that the application was within time up to the 8th of March, 1937 and this report appears to us to have been based on the provisions of section 4 of the Indian Limitation Act. The learned counsel for the respondent argues that the provisions of the Indian Limitation Act do not apply to the present case and relies on the case of *Braj Rani v. Sibta Din* (1) but we find nothing in that decision to support the contention of the learned counsel. All that was decided in that case was that the limitation prescribed by Chapter 12, rule 7 of the Chief Court Rules must be complied with. The decision does not consider whether or not the provisions of section 4 of the Indian Limitation Act are applicable to an application under section 12(2) of the Oudh Courts Act. Section 4 lays down that where the period of limitation prescribed for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the court re-opens. It will therefore be seen that the provisions of this section are quite general and we see no reason why they should not apply to an application like the present one.

The learned Judge against whose judgment the present appeal was filed is no longer a Judge of this Court but considering the circumstances in which the application was presented a day beyond time, it seems to us that if he were in the court, he would have exercised his discretion under rule 7 referred to above, in favour of the appellant.

We therefore overrule the objection of the learned counsel for the respondent and hold that the appellant's application under section 12(2) of the Oudh Courts Act was within time.

*Appeal allowed.*

(1) (1927) I.L.R., 3 Luck., 145.

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