

1939
 MOHAMMAD
 NAZIRUDDIN
 HASAN, DR.
 v.
 WAJID
 ALI
 AND OTHERS

plot is not, in the circumstances of the case, such a possession as would preclude the other co-sharers from interfering with it.

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

Appeal dismissed.

MISCELLANEOUS CIVIL

Before Mr. Justice G. H. Thomas, Chief Judge, and Mr. Justice Radha Krishna Srivastava

1939
 December, 21

RAM PHERON AND OTHERS (DEFENDANTS-APPELLANTS) v. SRI RAM ALIAS SRI NATH AND OTHERS (PLAINTIFFS-OPPOSITE-PARTY)*

Limitation Act (IX of 1908), section 5—Civil Procedure Code (Act V of 1908), Order XLIV, rule 1—Pauper appeal—Section 5, Limitation Act, whether applies to application for leave to appeal as pauper.

Section 5 of the Limitation Act has no application to an application for leave to appeal as pauper under Order XLIV, rule 1, Civil Procedure Code.

Mr. K. P. Misra, for the applicants.

THOMAS, C.J. and RADHA KRISHNA, J.:—The decree sought to be appealed from is dated the 12th August, 1939. On the 15th November, 1939, the applicants presented a memorandum of appeal as well as an application (Civil Miscellaneous Application No. 913 of 1939) for leave to appeal as a pauper under Order XLIV, rule 1 of the Code of Civil Procedure. They also filed an application (Civil Miscellaneous Application No. 914 of 1939) under section 5 of the Limitation Act supported by an affidavit explaining the delay in making the application for leave to appeal and praying that the application although beyond time be admitted.

Section 5 of the Indian Limitation Act applies to any appeal or application for a review of judgment or for

*Civil Miscellaneous applications Nos. 913 and 914 of 1939, on an application, dated the 15th November, 1939, under Order XLIV, rule 1, Civil Procedure Code, for leave to appeal as a pauper.

leave to appeal or to any other application to which that section has been made applicable by or under any enactment for the time being in force. It is clear that this section has not been made applicable to an application under Order XLIV, rule 1 of the Code of Civil Procedure. The limitation for making an application under Order XLIV, rule 1 is thirty days under Article 170 of the Limitation Act. The application is admittedly barred by time, and no extension can be allowed under section 5 as that section is not applicable.

The application under section 5 of the Limitation Act is therefore rejected.

As regards the appeal which does not bear any court-fee stamp, the learned Counsel for the appellants prays that some time be granted to him to pay up the requisite amount of court-fee. This Court has power to grant time in its discretion to make up the deficiency in the court fee on a plaint or memorandum of appeal under section 149 of the Code of Civil Procedure and now also under section 6, clause (2) of the Court Fees Act of 1870 as amended by the Court Fees (Amendment) Act of 1938. In the circumstances of the case we think that we should grant time to the appellants to make good the deficiency. We accordingly grant them two months' time from today for that purpose with a clear understanding that no further extension will be asked for.

Ordered accordingly.

1939
 RAM
 PHERON AND
 OTHERS
 v.
 SRI RAM
 alias
 SRI NATH
 AND OTHERS.

*Thomas, C.J.,
 and
 Radha
 Krishna,
 J.*