1922.

JOGENDRA SINGH v. MAHARAJA KESHO PRASAD SINGH.

was a *raiyat* for a term of years, and a *raiyat* cannot create a tenancy right in favour of another extending his own term. For all considerations we think that, after the expiry of the lease not only the lessee defendant No. 1 but all the defendants, who may have been holding the land under a settlement made by him, must be treated as trespassers [*Mahanth Jagarnath Dass* v. *Janki Singh* (1)]. As the landlord is therefore entitled to recover *khas* possession of the land, the defendants are also liable for mesne profits.

JWALA PRASAD, J.

The appeal must, therefore, be dismissed with costs to the plaintiff respondent only who has contested the appeal.

[The remainder of the judgment is not material to this report.]

BUCKNILL, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Dawson Miller, C. J. and Mullick, J.

SAGARMAL MARWARI

v.

LACHMISARAN MISIR.

1922.

June, 29

Appeal—limitation—terminus a quo—*judgment signed but not pronounced until a later date—Code of Civil Procedure*, 1908 (*Act V of* 1908), *Order* XX, *rules* 1 *and* 7—*Limitation Act*, 1908 (*Act IX of* 1908), *Schedule* 1, *Article* 156.

A decree should bear the date on which the judgment is delivered in open Court and the period of limitation for an appeal runs from that date and not from the date on which the judgment is written and signed.

"The day on which judgment is pronounced" (Order XX, rule 7, of the Code of Civil Procedure 1908) is the day on which it is pronounced in open Court under rule 1.

The facts of the case material to this report are stated in the judgment of Dawson Miller, C. J.

(1) (1922) I. L. R. 1 Pat. 340; 49 I. C. 81.

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SAGARMAL MARWARI v. LACHMISARAN MISIR.

DAWSON MILLER, C. J.

Susil Madhab Mullick and *Norendra Nath Sen*, for the appellant.

Satya Saran Bose, for the respondent.

DAWSON MILLER, C. J.—This is a question of limitation. The case was heard before the learned District Judge of Bhagalpur on the 6th January, 1922. On the 8th January after the hearing the learned Judge left Bhagalpur for Dumka to hold sessions there. On the 17th January he appears to have written a judgment and signed it but this was not communicated to anybody and certainly not delivered in open Court as provided by Order XX, rule 1. On the 4th February he returned to Bhagalpur and on the 10th February a decree was prepared after the signatures of the pleaders on each side had been taken. Nobody apparently knew anything about the judgment having been written or signed by the learned Judge until the 10th February and in fact as the learned District Judge himself says there was no delivery of judgment in Bhagalpur before that date; nor does it appear that there was any delivery of judgment anywhere else. The appeal in this case was filed on the 18th May and the question arises whether that was within the 90 days prescribed by Article 156 of the Limitation Act for an appeal to the High Court. The rules provide in terms that judgment shall be pronounced in open Court either immediately after the case has been heard or on some future date of which due notice shall be given to the parties or their pleaders. It is contended by the respondents that the judgment having been written by the learned Judge and signed on the 17th January although it was not pronounced on that date the limitation period runs from that day. I am entirely unable to accept this view. There was in fact no judgment delivered until it was pronounced in open Court according to the rules. The decree was prepared on the 10th February and I understand it was dated the 17th January, the day upon which the judgment was written and signed by the learned Judge although not communicated to anybody. Under the Limitation Act the period of limitation begins from

the date of the decree or order appealed from and under Order XX, rule 7, the decree shall bear date the day on which the judgment was pronounced. Therefore, even if the decree was dated the 17th January that date in fact was altogether wrong because at that time no judgment had been pronounced at all and whatever the date may be upon the face of the decree it ought to be dated the 10th February when the judgment was pronounced. In these circumstances it seems to me quite clear that the period of limitation begins from the 10th February. The appeal in fact was filed more than 90 days after the 10th February but it appears from the report of the learned District Judge that an application for copies of the judgment and decree was made on the 30th January although at that time judgment had not been pronounced and no decree was drawn up, and on the 21st February, the copies were supplied. Therefore the time occupied in obtaining copies of the judgment and decree between the 30th January and the 21st February, ought to be deducted but as the limitation period did not begin to run until the 10th February the period between the 10th and 21st February may be deducted in this case. It would follow, therefore, deducting these days, that the appeal was entered in time. For the purposes of limitation it seems to me that it is impossible to hold, having regard to the Statutes to which I have referred, that the date of the judgment should be any other than that upon which judgment is pronounced in Court when the parties know the effect of that judgment and whether it would be necessary for them to appeal or not. There may be cases, I can conceive, where the judgment has not been properly pronounced in open Court, when, for example, a Judge dies after having written and signed his judgment or there may be other cases in which the failure to pronounce judgment in open Court may be a mere irregularity which, under the provisions of the Code is not fatal to the validity of the judgment. In the present case, however, it seems to me impossible to hold that the period of limitation could begin before in fact the parties were aware by the pronouncement

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DAWSON MILLER, C. J.

of judgment in open Court, what the judgment in fact was. We are told that in many cases it is not the practice to pronounce judgment in open Court. If that is so I can only say that it is a direct breach of the practice laid down in Order XX, rule 1, and in all cases in my opinion that rule ought to be complied with. The appellant is entitled to his costs of this application which has been strenuously opposed by the respondents.

MULLICK, J.—I agree.

Application granted.

APPELLATE CIVIL.

Before Coutts and Das, J.J.

1922.

July, 4.

SAIYID FAZAL KARIM

v.

MUSSAMMAT BIBI FATMATUL KUBRA.*

Pre-emption—application of custom of, to non-Mahomedans—whether becomes part of the personal law.

Where, by custom, the law of pre-emption applies among non-Mahomedans in a certain area, it does not become a part of the personal law of such persons.

Bijnath Pershad v. *Kopilmon Singh*(1), referred to

Therefore, when a non Mahomedan who is amenable to the law of pre-emption in a particular locality is the owner of a property in another locality where a similar custom exists, he is not necessarily amenable to the custom in the latter locality.

Huree Churn Surmah v. *Thomas Ackroyd*(2) *and Paras Nath Tewari* v. *Dhani Ojha*(3), referred to.

Appeal by the defendant.

* Appeal from Appellate Decree No. 307 of 1921, from a decision of Lala Damodar Prashad, Subordinate Judge of Patna, dated the 20th November, 1920, confirming a decision of Babu Krishna Sahay, Munsif of Patna, dated the 28th February, 1920.

(1) (1875) 24 W. R. 95. (2) (1871) 18 W. R. 441.

(3) (1905) I. L. R. 32 Cal. 988.