

1926.  
 GANGA  
 BISHUN RAM  
 GAJADHAR  
 RAM  
 v.  
 JAGMOHAN  
 RAM.  
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sought for attachment before judgment in a suit for money and claimed to attach an agriculturist's house among other things. There was a compromise by which the defendant undertook that his property should be sold in execution of the instalment decree thereby consented to and there it was held by the Calcutta High Court that this consent decree was binding and that the properties though not originally transferable became saleable by reason of the decree.

I would, therefore, allow this appeal and set aside the orders of the Courts below and direct that the execution do proceed against this house. In view of the fact that this point was not taken in the Court below there will be no costs of the appeal.

KULWANT SAHAY, J.—I agree.

*Appeal allowed.*

## APPELLATE CIVIL.

*Before Das and Adami, J. J.*

RAM GOPAL MARWARI

v.

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Oct., 29.

BENGAL AND NORTH-WESTERN RAILWAY COMPANY.\*

*Railways Act, 1890 (Act IX of 1890), sections 77 and 140—posting of registered letter within time, whether proper service of notice—section 140, meaning of.*

Section 77, Railways Act, 1890, lays down :

"A person shall not be entitled to.....compensation for the loss.....of goods.....unless his claim to..... compensation has been preferred in writing by him or on his behalf to the Railway Administration within six months from the date of the delivery of.....goods for carriage by railway."

\* Appeals from Appellate Decrees nos. 1041 and 1332 of 1924, from a decision of Babu Kamla Prasad, Subordinate Judge of Muzaffarpur, dated the 18th June, 1924, reversing a decision of Maulavi Muhammad Abul Barkat, Munsif of Muzaffarpur, dated the 29th September, 1923,

Section 140 provides that

“ Any notice.....may be served—

“ (c) by forwarding it by post in a prepaid letter addressed to the Manager or Agent at his office and registered.....”

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*Held*, that the posting of a registered letter containing a notice of claim, within six months, is a proper service of notice as contemplated by section 77 read with section 140(c), Railways Act, 1890, and that the fact that it is not received by the Agent until after that time has expired does not bar the institution of a suit.

Appeals by the plaintiffs.

Three bales were despatched over the defendants' Railway Company from Bombay to the appellant at Muzaffarpur. On arrival of the bales at Muzaffarpur on the 18th October, 1921, it was found that one was missing. Thereafter the appellant on the 18th April, 1922, so far as it could be ascertained, posted a registered notice to the Agent of the defendant Railway Company, claiming compensation for the loss, and thereafter he instituted a suit against two Railway Companies claiming compensation by reason of the negligence of the Railway Company, whereby the loss was caused.

The first Court decreed the suit against the present respondents Railway Companies, finding that there had been wilful neglect on the part of the Railway. On appeal the finding as to wilful neglect was upheld by the Appellate Court, but that Court, after considering sections 77 and 140 of the Railways Act, held that the notice to the Agent had not been preferred in time and, therefore, the suit was not maintainable as being beyond time.

*Sultan Ahmad* (with him *Janak Kishor*), for the appellants.

*S. N. Bose* and *A. N. Gupta*, for the respondents.

ADAMI, J.—The question that arises in this case is as to the meaning of section 77 and section 140 of

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the Railway Act. Section 77 states that a person shall not be entitled to compensation for loss of goods delivered to the Railway to be carried unless his claim to compensation has been preferred in writing by him or on his behalf to the Railway Administration within six months from the date of the delivery of the goods by the Railway. Section 140 describes how notices on Railway Administrations are to be served and clause (c) of the section enables such notice to be served by forwarding it by post in a prepaid letter addressed to the Manager or Agent of the Railway at his office, the letter being registered. The 18th April, 1922, was the last day of the six months allowed by the Act starting from the 18th October, 1921. The appellant did address a registered letter containing the notice to the Agent of the Railway and it is found that that letter was as a fact received by the Agent on the 20th April, 1922. It has also been found that such letter could not have been received by the Agent on the 20th April, 1922, unless it was posted from Gorakhpur on or before the 18th April. The finding then is that the letter was posted on the 18th April, 1922, that is to say within the six months allowed. The question is whether this posting complies with the terms of section 77, that is to say whether the posting of the letter containing the notice was a proper service of notice as contemplated by section 77. The lower Appellate Court has found that this was not a compliance with section 77 and that that section requires the notice to be received by the Agent within six months. Reading, however, section 140, clause (c), it would seem quite plain that the preferment of the claim has to be made by forwarding the letter by post that is to say by posting a registered letter. It seems clear also that when the letter was posted the claim was preferred as contemplated in section 77. If the matter be regarded from the opposite point of view, we would have to hold that where a person wishes to prefer a claim, residing at some distance from the head office of the Railway Company, the time within which he can

prefer a claim must be less than that allowed by the Act, for as in the present case the letter would have to be posted two days before the end of the period of limitation and thus the period of limitation would be shortened. I do not think that it was the intention of the Act that if the claim was made by posting the letter within the time allowed the fact that it was not received by the Agent till after that time expired would bar the institution of a suit. In my opinion the appellant preferred the claim within time and the suit should not have been dismissed by the lower Appellate Court on the ground that notice had not been served in time.

I would allow the appeal with costs both in this and in the lower Appellate Court. The judgment of the learned Munsif will be restored except in regard to the direction for costs against the Bombay Baroda and Central India Railway Company.

DAS, J.—I agree.

*Appeals allowed.*

## PRIVY COUNCIL.

ABADI BEGUM

*v.*

KANIZ ZAINAB\*

*Muhammadian Law—Wakf—Shia Law—Transfer of possession—Wakif to be Mutawalli—Mutation of Names—Reservation of excessive Mutawalli Salary to Wakif.*

Under Shia Mahomedan law a deed of wakf is not valid unless possession has been given under it; further, the property must be entirely taken out of the wakif.

• The possession given must be such as the case admits. Thus, where the wakif is to be the first mutawalli, but there has been no mutation of the property into the name of the wakif as mutawalli, the wakf is wholly void.

*Hamid Ali v. Mujawar Hussain Khan* (1), approved.

\* Present: Lord Atkinson, Lord Carson and Sir John Wallis.  
(1) (1902) I. L. R. 24 All. 257, 265.

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