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earlier date. The copy of the judgment was not delivered until the 20th September and he seeks to add to the final date of 31st October this extra period of 13 days. The time occupied in obtaining the copy of the judgment was clearly not "requisite" within the meaning of section 12. But in any case this would only bring us at the latest to the 13th November and he thus is still out of time giving him the maximum allowance possible in both cases. But for reasons into which it is unnecessary to go for the purposes of this judgment we were satisfied at the hearing upon the facts disclosed in the affidavit that there was sufficient cause for granting an extension sufficient to bring his appeal within time.

The same conditions with minor variations in the matter of dates apply to P.C.A. no. 25 of 1933. In the matter of the appeals by the respondent they also were out of time but we were satisfied on the facts set forth in the respondent's affidavits that they should also be given an extension of time for lodging their appeal. The object of this judgment has been to correct the erroneous practice in the matter of calculating time which was inaugurated by the case to which we have referred.

Order accordingly.

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April, 11.

Before Wort and Dhavle, JJ.

RAI BAHADUR RADHA KISHUN

v.

BHOLA CHAUDHURI.*

Code of Civil Procedure, 1908 (*Act V of* 1908), *section* 4, *whether applies when no separate allotment of revenue asked for—Estates Partition Act*, 1897 (*Beng. Act V of* 1897),

* Appeal from Original Decree no. 31 of 1930, from a decision of Babu Nidheshwar Chandra Chandra, Subordinate Judge of Muzaffarpur, dated the 4th June, 1929.

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sections 26 and 29—Civil court decree made before estate is declared under partition—section 26, whether applicable—decree for partition by civil court, whether can be superseded by a partition subsequently obtained from the Collector.

Section 54, Code of Civil Procedure, 1908, does not apply to a suit for partition of a revenue-paying estate when no separate allotment of revenue is asked for.

Jogodishury Debea v. *Kailash Chundra Lahiry*(1), followed.

Section 26 of the Estates Partition Act, 1897, has no application to a case where the partition decree is passed before the estate is declared, under section 29 of the Act, to be under partition.

A decree for partition made by the Civil Court cannot be superseded by a partition subsequently obtained from the Collector.

Appeal by the defendants.

The facts of the case material to this report are set out in the judgment of Dhavle, J.

A. K. Mitra, for the appellants.

S. N. Roy and *G. P. Sahi,* for the respondents.

DHAVLE, J.—This is an appeal by defendants 28 and 29 against the final decree in a suit for partition of Tauzi no. 7543. The preliminary decree specified the shares of the various parties. An appeal was preferred against the preliminary decree and dismissed by this Court. It was then found that the shares given in the decree totalled more than 16 annas. They were, therefore, corrected according to Register D, giving a total of slightly less than 16 annas. Against this amendment these defendants moved this Court. They succeeded on the ground that the lower court had no jurisdiction to alter the shares given in the preliminary decree after it had been confirmed in appeal by this Court. Ross, J., in allowing the application of these appellants on that occasion, observed that " it will be open to the parties to apply

(1) (1897) I. L. R. 24 Cal. 725, F. B.

as they may be advised to the High Court either by way of appeal or revision, whichever course may be applicable in the circumstances ". Neither of these courses was, however, adopted by any of the parties. Ultimately the final decree was drawn up by the lower court on the commissioner's report, after disposing of the objections made by these defendants-appellants, and the order passed on that occasion is the basis of the present appeal.

The objections that were taken by the defendants were threefold, one relating to khata 196, another to plot 3513, and the third to three other plots. The lower court found that there was no substance in any of these objections.

Mr. Mitra for the appellants began his argument by urging that the appellants had since obtained a Collectorate partition and that the partition made by the Civil Court ought to be replaced by the partition made by the Collector. He represented that this would save confusion, and he went on to argue that section 54 of the Code of Civil Procedure left the civil court no option to effect the partition decreed by it through any agency other than the Collector. This last contention must clearly be overruled. The point was considered by a Full Bench of the Calcutta High Court as long ago as 1897 in *Jogodishury Debea* v *Kailash Chundra Lahiry*(1) when it was ruled that section 265 (now section 54) of the Code of Civil Procedure does not apply to a suit for partition of a revenue-paying estate when no separate allotment of revenue is asked for. It is not contended that in the present case any separate allotment of revenue was asked for. Learned Counsel also referred to section 26 of the Estates Partition Act (Bengal Act V of 1897), but it is quite clear that this section has no application because the partition decree of the civil court was admittedly passed before the estate was declared, under section 29, to be under partition. Reference

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was also made to section 12 of this Act, which provides that

> "Any Civil Court which has made a decree for the partition or for the separate possession of a share of an undivided estate paying land-revenue to the Government may, notwithstanding anything in section 265 (now section 54) of the Code of Civil Procedure, cause the decree to be executed in the manner prescribed in section 396 (corresponding to Order XXVI, rule 14) of that Code."

DHAVLE, J. This section again is against the appellants' contention. Mr. Mitra in substance asked this Court in appeal to vacate the decree of the lower court on the ground of the partition made by the Collector; but he has entirely failed to show that there is any authority at all for doing so. It is clear that if the Civil Procedure Code and the Estates Partition Act be read together, there is no warrant whatsoever for superseding the decree of the civil court by a partition subsequently obtained from the Collector.

Learned Counsel also contended that the jama fixed for khata 196 is arbitrary and deprives the appellants of their proper share of the correct jama It appears, however, that the jama of the khata was kept intact in accordance with an agreement between all the parties.

He has also urged that the decree under appeal as it stands will be incapable of execution because the shares specified in it give a total of more than 16 annas. That seems to be a fact, the parties having never troubled to get the total put right. The obvious remedy would be a proportionate reduction of all the shares so as to give a total of 16 annas. This in fact is the result which the appellants seemed anxious to avoid, and it was suggested by learned Counsel that evidence may now be taken regarding the correct shares of each of the parties. The stage for doing so, however, has, in my opinion, long passed.

The points urged before us all fail, and I would dismiss the appeal with costs.

WORT, J.—I entirely agree.

Appeal dismissed.