

1934.

ABDUL
LATIF
v.
DERI
MAETON.
DHAVLE, J.

with recent decisions in most of the High Courts", among which they mention *Ramling Parwatayya Samble v. Bhagwant Sambhuappa Kathale*(¹). This was a case in which it was held that a document which was an agreement to convey and created no interest in the property agreed to be sold was not compulsorily registrable under section 17, sub-section (2), clause (v), of the Indian Registration Act.

The document in question, therefore, did not require registration at all.

Assuming, however, that on another construction of the clause which creates a mortgage or charge the document did require registration, there is the further contention of Mr. Khurshed Husnain that in the present suit the deed was not put in to enforce any charge or mortgage and that there was nothing to prevent the plaintiff from using the other part of the document which purports to be a mere agreement for sale. In support of this contention he has cited definite authority in the decision of *Vyram Chetti v. Subramanian Chetti*(²).

The view of the learned District Judge that the document was inadmissible in evidence and that therefore no specific performance could be decreed must, therefore, be overruled.

Appeal allowed.

Cross-objection dismissed.

APPELLATE CIVIL.

Before Courtney Terrell, C.J. and Macpherson, J.

DHANNA MISTRY

v.

BENGAL-NAGPUR RAILWAY COMPANY, LTD.*

Limitation Act, 1908 (Act IX of 1908), sections 4 and 12—mode of computation.

* Privy Council Appeals nos. 23, 25 and 27 of 1933 and no. 1 of 1934.

(1) (1925) I. L. R. 50 Bom. 334.

(2) (1920) I. L. R. 43 Mad. 660; L. R. 47 I. A. 188.

1934.

April, 17.

Section 4 of the Limitation Act, 1908, provides :—

“ 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 reopens.”

Held, that “ the period of limitation prescribed for any suit, appeal or application ” being in the singular refers to the period prescribed by the Act, having regard to the general application of the Article appropriate to the particular class of suit, appeal or application subject to the allowances under section 12 of the Act appropriate to the particular suit, appeal and application in question, and it contemplates that the performance of an act, which would otherwise have been performed at the end of that period, shall take place on the opening day of the term next following and not on any subsequent day.

Held, therefore, that the period prescribed for the filing of an appeal should first be subjected to the allowance prescribed by section 12 of the Act, if the circumstances of the case justify such allowance and then if the end of such period falls within the vacation, section 4 may be applied and the appeal must then be lodged on the day on which the vacation comes to an end and the court reopens.

Ramcharan Sukul v. Sri Thakurji Mandil Dwarkadish(1), not followed.

The facts of the case material to this report are set out in the judgment of the Court.

G. C. Mukharji, for the appellant in Appeals nos. 23 and 25, and the respondent in Appeals nos. 1 and 27.

Bagram (with him *A. B. Mukharji* and *J. Ghosh*), for the respondent in Appeals nos. 23 and 25 and the appellant in Appeals nos. 1 and 27.

S. N. Bannerji and *N. N. Ray*, for the respondent in Appeals nos. 1 and 27.

COURTNEY TERRELL, C.J. and MACPHERSON, J.—
These are applications for the certificate of the Court that the proposed appeals to His Majesty in Council fulfil the requirements of section 110 of the Code of Civil Procedure. We have already granted the required certificate both for the appeal and the counter

1934.

DHANNA

MISTRY

v.

BENGAL-

NAGPUR

RAILWAY

COMPANY,

LTD.

1934.

DHANNA
MISTRY
v.
BENGAL-
NAGPUR
RAILWAY
COMPANY,
LTD.

COURTNEY
TERRELL,
C. J.
AND
MAC-
PHERSON, J.

appeal in each case. We were of opinion that the value of the subject-matter in dispute was in each case above Rs. 10,000 and that the decree of this court was not a decree of affirmance. The substantial point for decision was as to whether the appeals and cross-appeals were in time and in the event of their not being in time whether an extension under section 5 of the Limitation Act could properly be allowed. It was frankly conceded on behalf of the appellant that the appeals could only be considered in time if a certain decision of this court in the case of *Ramcharan Sukul v. Sri Thakurji Mandil Dwarkadish*⁽¹⁾ was correct. It was also conceded that the decision in that case had entirely changed the practice which had hitherto prevailed in this court and it was contended that it was binding upon us. In that case the Stamp Reporter had reported that the period of limitation of 90 days had been exceeded and that the appeal was out of time. On this report the matter came before a Division Bench before notice of the appeal had issued to the defendants and the appellants alone appeared. The decision was of a preliminary nature only for it is clear that at the actual hearing of the appeal it would be open to the respondent to take the same point again that had been taken by the Stamp Reporter notwithstanding the former decision of the court. The decision, therefore, was *ex parte* and of a preliminary nature and we do not consider that it has any binding force on us who have heard both the appellant and the respondent in the case before us.

The point for decision concerns the computation of the period of limitation having regard to sections 4 and 12 of the Limitation Act and turns upon the true construction to be put upon section 4 which runs as follows:—

“ 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 reopens.”

(1) (1933) 14 Pat. L. T. 91.

The learned Judges who heard the case to which I have referred construed the section in the following manner: they decided that the period of 90 days mentioned in Article 179 of the Limitation Act should first be considered. If that period of 90 days expired during the vacation then they held that the appeal must be instituted on the day when the court reopened and to such extension of the period of 90 days as resulted there should be added such excluded period as is prescribed by section 12 of the Act. The view which had up to that time prevailed was that the period prescribed by the article should first be subjected to the allowance prescribed by section 12, if the circumstances of the case justified such allowance, and then if the end of such period fell within the vacation, section 4 might be applied and the appeal must then be lodged upon the day on which the vacation came to an end and the court reopened. It is to be noted that the report of the decision of the learned Judges in the case cited gives no indication that either the former practice or the wording of section 4 was brought to their attention. In our opinion "the period of limitation prescribed for any suit, appeal or application" being in the singular refers to the period prescribed by the Act having regard to the general application of the article appropriate to the particular class of suit, appeal or application subject to the allowances under section 12 appropriate to the particular suit, appeal or application in question, and it contemplates that performance of an act, which would otherwise have been performed at the end of that period, shall take place on the opening day of the term next following and not on any subsequent day. The learned Judges, however, in the case reported impliedly construed the opening words of the section as referring not to the particular suit, appeal or application but to the period prescribed by the Article for suits, appeals or applications generally. But the words "the period of limitation", and the word "any" and the final words in our opinion prevent such a construction.

1934.

 DHANNA
MISTRY
v.
BENGAL-
NAGPUR
RAILWAY
COMPANY,
LTD.

 COURTNEY
TERRELL,
C. J.
AND
MAC-
PHERSON, J.

1934.

DHANNA
MISTRY
v.
BENGAL-
NAGPUR
RAILWAY
COMPANY,
LTD.
COURTNEY
TERRELL,
C. J.
AND
MAC-
PHERSON, J.

The facts of the appeal no. 23 of 1933 are as follows:—On the 15th March, 1933, judgment was delivered. Now by Order XX, rule 7, of the Code of Civil Procedure the decree though drawn up later bears the date of the judgment and time began to run against the appellant from that date. On the 30th March the appellant applied for a copy of the decree. On the 1st August the decree was signed. On the 16th August the copy of the decree was ready. The lodging of the appeal and the application for the certificate did not take place until the 15th November. Taking a period of 90 days from the date of the judgment we reach the 13th June which fell in the long vacation. Applying the principle newly established by the decision above referred to the appellant considered that “the period of limitation prescribed” did not terminate until the 10th July on which day the court reopened. He then sought to add to this period the period involved in obtaining a copy of the decree. He had made application for copy on the 30th March and he was unable to obtain the copy until the 16th August. This is a period of 139 days and 139 days from the 10th July bring us to the 26th November and his appeal having been lodged on the 15th November, he says that he is in time. But as we have pointed out this calculation was erroneous. The period prescribed within the meaning of section 4 of the Act means the period of 90 days plus the period of 139 days occupied in obtaining a copy of the decree. This makes a total of 229 days. 229 days forward counting from the 16th March bring us to the 31st October. The appeal having been lodged on November 15th was, therefore, out of time. It is true that the appellant seeks the further benefit of the time taken in obtaining a copy of the judgment but it is noticeable that he did not make his application for copy of the judgment until the 8th September notwithstanding that the judgment had been delivered on the 15th March and whether or not he could have obtained copies of the decree he certainly could have obtained copies of the judgment at a very much

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.

APPELLATE CIVIL.

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.

1934.

DHANNA
MISTRY

v.

BENGAL-
NAGPUR
RAILWAY
COMPANY,
LTD.

COURTNEY
TERRELL,

C. J.

AND

MAG-

PHERSON, J.

1934.

April, 11.