

## APPELLATE CIVIL.

*Before Mr. Justice Martineau and Mr. Justice Harrison.*

GHULAM HAIDAR AND OTHERS (PLAINTIFFS)—  
*Appellants,*  
*versus*

JIWAN AND OTHERS (DEFENDANTS)—*Respondents.*

Civil Appeal No. 2762 of 1918.

*Second appeal—District Judge deciding appeal ex parte without notice to some of the respondents—Jurisdiction of High Court in second appeal to set aside the ex parte decree.*

*Held*, that where an appeal is decided *ex parte* by a District Judge, the High Court has jurisdiction in second appeal to reverse the decree of the District Judge on the ground that he was wrong in proceeding to decide the appeal *ex parte*.

*Sadhu Krishna Ayyar v. Kuppan Ayyanger* (1), followed.

*Jadu Nath v. Ram Narayan* (2), disapproved.

*Second appeal from the decree of W. DeM. Malan, Esquire, District Judge, Gurdaspur, dated the 17th June 1918, modifying that of Lala Ganesh Das, Subordinate Judge, 1st Class, Gurdaspur, dated the 29th January 1917, and decreeing the claim.*

HAR GOPAL FOR TEK CHAND, for Appellants.

JAGAN NATH FOR MEHR CHAND MAHAJAN, for  
Respondents.

THE judgment of the Court was delivered by—

MARTINEAU J.—This is an appeal from an appellate decree of the District Judge of Gurdaspur, who has held that the suit for land claimed by the plaintiffs is barred by limitation except in respect of an area of 15 kanals 1 marla.

The first point urged on behalf of the plaintiffs-appellants, who were respondents in the Lower Appellate Court, is that three of them, namely, plaintiffs Nos. 7, 8 and 9, were not given an opportunity by that Court of being heard. This contention is correct. The appeal was heard by the learned District Judge on the 14th June 1918 and admittedly no intimation of the date was sent to plaintiffs Nos. 7, 8 and 9 or to their counsel, *Sheikh Chiragh Din*.

(1) (1906) I.L.R. 30 Mad. 64 (F. B.)

(2) (1908) 1 Indian Cases 329.

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It is pointed out for the respondents that when the case was remanded by the District Judge under Order XLI, rule 25, Civil Procedure Code, by his order of the 10th November 1917, the 1st of March 1918 was fixed for the hearing of the appeal, and it is urged that it was the duty of the plaintiffs to inform themselves of the dates to which the case was afterwards adjourned. There is, however, no force in this argument, as the hearing of the 14th June took place, not at the headquarters of the district, but at Dalhousie, so that it was at all events necessary to inform counsel that the appeal would be heard there.

It is true that intimation was sent to Lala Mula Mal, counsel for the other plaintiffs, who appeared and argued the case for his clients, but plaintiffs Nos. 7, 8 and 9 were also legally entitled to be heard.

It is argued for the respondents that the proper course for plaintiffs Nos. 7, 8 and 9 was to apply to the District Judge to set aside the *ex-parte* decree which had been passed against them, and that they cannot appeal from the decree on the ground that no notice was served on them by the Lower Appellate Court, but can only attack the decree on the merits. *Jadu Nath v. Ram Narayan* (1), a ruling by a single Judge of the Court of the Judicial Commissioner of Oudh, is cited in support of this argument, but in *Sadhu Krishna Ayyar v. Kuppan Ayyanger* (2), it was held by a Full Bench that when a suit is decided *ex-parte* the Appellate Court has jurisdiction to reverse the decree of the Lower Court on the ground that such Court was wrong in proceeding to decide the suit *ex-parte*. We agree with the view taken by the High Court of Madras, and, as plaintiffs Nos. 7, 8 and 9 were not given an opportunity of being heard in the Lower Appellate Court, we must hold that there had been no proper hearing of the appeal by that Court.

We accordingly accept this appeal, set aside the decree of the Lower Appellate Court, and remand the case to that Court for a fresh hearing and decision of the appeal before it. The Court-fee paid on the memorandum of appeal in this Court will be refunded. Other costs will be costs in the case.

M.R.

Appeal accepted.

(1) (1909) 1 Indian Cases 329.

(2) (1906) I.L.R. 30 Mad. 54 (F. B.)