

Miscellaneous Civil.

Before Mr. Justice Abdul Raof and Mr. Justice Martineau.

NAWAZ ALI AND OTHERS (DEFENDANTS) Petitioners,

versus

ALLU AND OTHERS (PLAINTIFFS) Respondents.

Civil Miscellaneous No. 554 of 1922.

Civil Procedure Code, Act V of 1908, section 110 and order XLV, rule 7 (as amended by Act XXI of 1920)—Limitation—where decree has been amended on review—Value—where subject matter of suit is land assessed to revenue.

The application for leave to appeal to His Majesty in Council concerned a decree which was first passed by the High Court on the 29th November 1921, but was modified in review on the 19th May 1922. The application was made on the 8th August 1922.

Held, that the period of limitation for the application must be reckoned from the 19th May 1922, when a new decree was passed in substitution for the first one, and the application was consequently in time.

Jaykishan v. Ataoor Rohoman (1), and *Vadilal v. Ful Chand* (2), followed.

Held also, that the rules under the Suits Valuation Act, for the valuation of land for purposes of jurisdiction do not apply in determining the value for the purposes of section 110 of the Code of Civil Procedure, but it is the market value which has to be ascertained.

Petition for leave to appeal to His Majesty's Privy Council against the decree and the judgment of the High Court, dated 29th November 1921/19th May 1922.

M. S. BHAGAT, for Petitioner.

G. S. SALARAYA, for Respondents.

The order of the Court was delivered by—

MARTINEAU J.—This is an application for leave to appeal from a decree of this Court which reversed the decree of the Court of first instance. The decree of this Court was first passed on the 29th November 1921,

(1) (1880) I. L. R. 8 Cal. 22. (2) (1905) I. L. R. 30 Bom. 56.

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but on an application for review it was modified on the 19th May 1922. It is clear that the period of limitation for the present application is to be reckoned from the latter date, on which a new decree was passed in substitution for the first one and *Joykishen v. Ataoor Rohoman* (1), and *Vadilal v. Ful Chand* (2), are authorities in support of this view. The rulings to which counsel for the respondents has referred us are not in point. We hold, therefore, that the application, which was made on the 8th August 1922, is within time.

It remains to determine whether the value of the land in dispute is Rs. 10,000 or upwards. The rules under the Suits Valuation Act in accordance with which the land was valued for the purposes of jurisdiction in the Lower Court do not apply in determining the value for the purpose of Section 110 of the Civil Procedure Code, but it is the market value which has to be ascertained.

We accordingly direct the Subordinate Judge to make inquiry and report to this Court whether the value of the land in dispute is Rs. 10,000 or upwards.

C. H. O.

1) (1880) I. L. R. 6 Cal. 22.

(2) (1905) I. L. R. 30 Bom. 56.