APPELLATE CIVIL.

Before Mr. Justice Brown.

1928

Dec. 17.

MAUNG PO KYAW
v.
MA LAY AND OTHERS.*

Limitation Act (IX of 1908), ss. 5, 12—Date of decree same as date of judgment—Time runs although decree not drawn up or signed—Requisite time excluded from computation only if application for copy of judgment or decree actually made—Pleader's ignorance and reliance on Court clerk, no excuse.

For the purposes of the Limitation Act the date of a decree is the date of the judgment and under s. 12 of that Act time can only be allowed as time requisite for obtaining copies if the applicant has actually made an application for a copy. The fact that a decree has not been drawn up or signed does not prevent time from running. A pleader who chooses to accept the statement of a Court clerk that an application for a copy of a judgment and decree cannot be accepted until the decree has been signed cannot plead that as an excuse under s. 5 of the Act to extend the time for the filing of his appeal.

Maung Kin v. *Maung Sa*, 3 L.B.R. 62; *Ma Mai Gale* v. *Tun Win*, 8 L.B.R. 506—*referred*

BROWN, J.—The applicant Maung Po Kyaw has applied for permission to appeal in *forma pauperis*. He wishes to appeal against the decree of the District Court, Tharrawaddy, and the judgment on which that decree is based is dated the 11th of October 1928. The period allowed for filing his application is 30 days after that date, or allowing eight days, the time he took to obtain a copy of the judgment and decree, 38 days. The application was not filed until the 4th of December, 16 days after it was barred by limitation. I have been asked to excuse the delay for reasons given in an affidavit of the pleader of the petitioner. The pleader states that about three days after the judgment he applied for a copy of the judgment and decree but was told by

* Civil Miscellaneous Application No. 174 of 1928.

the clerk of the Court that the application could not be accepted as the decree had not been drawn up. He made enquiries from time to time as to whether the decree was drawn up but was told that it was not. The decree was actually signed on the 7th November and the application for the copy was made on the 8th. The affidavit goes on to state that the pleader advised his client that for purposes of limitation time would be computed from the date of the decree.

It was held by a Full Bench of the Chief Court of Lower Burma in 1905 in the case of *Maung Kin* v. *Maung Sa* (1) that the date of a decree for the purposes of the Limitation Act is the date of the judgment, and that time can only be allowed as time requisite for obtaining copies if the applicant or appellant has actually made an application for a copy. Now in this affidavit the pleader says that he applied for the copy, but it would appear from his affidavit that he accepted the statement of the clerk of the Court that such an application would not be accepted until the decree was signed. It does not seem to me that this was an effective application for the copy and the time requisite for obtaining the copy cannot begin to run until the 8th November, with the result that the application is actually barred by 16 days; nor am I satisfied that sufficient reason has been made out for accepting this application under section 5 of the Limitation Act.

It was held in the case of *Ma Mai Gale* v. *Tun Win* (2) that a *bonâ fide* mistake on the part of a pleader may be sufficient cause for admitting an appeal after time, but that no mistake is *bonâ fide* unless made in spite of due care and attention. I cannot find anything here to justify the view that the pleader's advice to his client that limitation would be

(1) (1905) 3 L.B.R. 62. (2) (1916) 8 L.B.R. 566.

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MAUNG PO KYAW v. MA LAY AND OTHERS.

BROWN, J.

computed from the date of the decree was made with due care and attention. There is no explanation offered as to why the pleader was not aware of the law as laid down in *Maung Kin's* case, which has ever since been followed by the Courts in this Province. Copies were actually obtained on the 15th of November and there is no explanation, besides this incorrect legal advice, as to why there was a further delay of 19 days after filing the application. In the application the applicant does mention his illness but it is only a vague mention and there is no affidavit in support of this allegation. I am not satisfied that the applicant has made out a case under the provisions of section 5 of the Limitation Act, and I must therefore hold that the present application is barred by limitation. It is accordingly rejected.

APPELLATE CIVIL.

Before Mr. Justice Pratt and Mr. Justice Otter.

1928

Dec. 20.

MANDALAY MUNICIPAL COMMITTEE
v.
MAUNG IT.*

Land Acquisition Act (I of 1894), ss. 3, 18, 20 and 20 (b)—Parties to a proceeding on reference to the Civil Court—Public authority on whose behalf Collector acquires land not a necessary party, nor entitled to separate notice.

Held, that to a reference to the Civil Court by the Collector under the provisions of s. 18 of the Land Acquisition Act, the local authority at whose instance and at whose cost the acquisition of land is made is not a necessary party and is not entitled to a separate notice of the reference.

A. C. Mukerjee for the appellants.

PRATT and OTTER, JJ.—A piece of land belonging to Maung It was acquired by the Collector under

* Civil Miscellaneous Appeal No. 40 of 1928 (at Mandalay).