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ATMA RAM
v.
GODHU RAM.
BROADWAY J.

therefore, accept this appeal and dismiss the plaintiffs' suit with costs throughout.

The cross objections filed on behalf of the respondents by Mr. Ajit Parshad are also dismissed with costs.

A. N. C.

Appeal accepted.

APPELLATE CIVIL.

Before Blide J.

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Oct. 24.

HAR LAL AND OTHERS (DEFENDANTS) Appellants
versus
SRI RAM (PLAINTIFF) Respondent.

Civil Appeal No. 4 of 1931.

Limitation—Starting point of—on Appeal—insufficiently stamped—where deficiency has been made up subsequent to institution of appeal under order of the appellate Court—Civil Procedure Code, Act V of 1908, Section 149.

Held that where an Appellate Court ordered the Court-fees on the memorandum of appeal to be made up by a certain date and it was made up accordingly the Court-fee must be held to be effective from the date of the original institution of the appeal (*vide* Section 149 of the Code of Civil Procedure) and limitation must be computed up to that date and not the date of payment of the additional Court-fee.

Faizullah Khan v. Mauladad Khan (1), and Jawala Singh v. Dhano (2), relied upon.

Second appeal from the decree of R. S. Lala Ghanshyam Das, District Judge, Hissar, dated the 22nd August, 1930, affirming that of Sheikh Mohammad Hussain, Subordinate Judge, 3rd class, Hissar, dated the 13th June, 1930, by dismissing the appeal as time barred.

SHAMAIR CHAND and QABUL CHAND, for Appellants.

N. C. PANDIT and CHIRANJIV LAL, for Respondent.

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BHIDE J.—Civil appeals Nos. 4, 5 and 1672 of 1931 are connected, and will be disposed of together.

BHIDE J.

I shall first take up civil appeal No. 4 of 1931. This appeal arises out of a redemption suit instituted by one Siri Ram, son of Tulsa. A preliminary decree was granted and the mortgagor was ordered to pay Rs. 575-13-0 on or before the 13th May, 1927. The payment was not made by the date fixed and thereafter the defendant-mortgagee applied for a final decree to the effect that the right of the mortgagor to redeem the property was extinguished. This application was dismissed by the trial Court. An appeal was preferred to the District Judge, who found that the proper court-fee had not been paid on the memorandum of appeal. He thereupon made the following order:—

“The court-fee must be made up on the value of the original suit. It must be done by to-morrow morning as it is already 4-45 P.M. to-day. I make no promises as to whether I will extend the time for presentation of appeal.”

The court-fee was accordingly made up, but the learned District Judge eventually dismissed the appeal on the ground that the proper court-fee had not been affixed on the appeal when presented, and the appeal was, therefore, time-barred. From this decision a second appeal has been preferred to this Court and it is urged on behalf of the appellant that the learned District Judge's order was illegal inasmuch as the Court having ordered the court-fee to be made

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up within a certain time, the memorandum of appeal must be held to have been properly stamped and presented on the date of the original institution. Section 149 of the Civil Procedure Code, *Faizullah Khan v. Mauladad Khan* (1), and *Jawala Singh v. Dhano* (2), were relied upon as authorities in support of the contention.

The contention appears to me to be well-founded. It is true that the learned District Judge said in his order that he did not make any promises as to whether he would extend the time for presentation of the appeal, but, at the same time he definitely ordered the court-fee to be paid up by the next day. He had evidently made up his mind on the question of court-fee, and given time for payment till the next day. He left the question of limitation open. But the point for decision is whether he could do so. In my opinion time for payment of court-fees could only have been allowed under section 149, Civil Procedure Code, and by virtue of the provisions of that section, the court-fee must be held to be effective from the date of the institution of the appeal. Consequently limitation was automatically saved. This view is supported by the authorities relied upon by the learned counsel for the appellants which have been referred to above.

I accordingly accept the appeal and setting aside the order of the learned District Judge remand the case to him for redecision. Stamp on appeal will be refunded. Costs will follow final decision.

[*The remainder of the judgment is not required for the purpose of this report. Ed.*]

Appeal accepted.

A. N. C.

(1) (1929) I L. R. 19 Lah. 737, 743.

(2) (1931) 133 I. C. 122.