

1887. section 74 of the Act, to make the enquiry therein directed. The rule in that form will be made absolute.

*IN RE*  
SHAIK ABDUL  
AZIZ

Attorneys for the applicant:—Messrs. *Payne, Gilbert, and Sayani*.

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.*

DINKAR PARSHARA'M, (ORIGINAL DEFENDANT), APPELLANT, v.  
VINA'YEK MORESHWAR, (ORIGINAL PLAINTIFF), RESPONDENT.\*

*Civil Procedure Code (Act XIV of 1882), Sec. 561—Filing of objections, time for—Practice.*

The expression "the day fixed for the hearing" used in section 561 of the Civil Procedure Code (Act XIV of 1882), means the day on which the hearing actually commences, and includes both that day and the day to which the hearing may be adjourned. The purpose of the section is to give the appellant timely intimation of the proposed objections.

Accordingly, a cross objection filed by the respondent on the day mentioned as the day fixed for hearing the appeal in the notice to the respondent, was held not too late.

*Rangildás v. Bai Girja*<sup>(1)</sup> referred to and followed.

THIS was a second appeal from a decision of G. McCorkell, Additional Assistant Judge of Ratnágiri.

The plaintiff having on the 3rd July, 1883, filed an appeal from a decree of a Subordinate Judge, the usual notice was served upon the defendant on the 18th August, 1883. On the 24th September of the same year, which was also the day originally fixed for the hearing of the appeal, the defendant put in cross objections. The Assistant Judge was of opinion that the objections, not having been taken seven days before the day fixed for the hearing, were taken too late under section 561 of the Civil Procedure Code (Act XIV of 1882). He, therefore, refused to entertain the objections, and heard the appeal without reference to them.

\*Interlocutory Judgment in Appeal, 263 of 1884.

(1) I. L. R., 8 Bom., 559.

From this decision the defendant preferred a second appeal to the High Court.

*Gokuldás Kahándás* for the appellant:—The Assistant Judge was wrong in refusing to entertain the cross objection. The objection was not too late. See *Rangildás v. Báí Girja* <sup>(1)</sup>

*Ghanashám Nilkanth Nádkarni*:—Notice of objection should be filed seven days before the day fixed for hearing—*Kally Prosunno Biswás v. Mungala Dasse* <sup>(2)</sup>; *Deo Kishen v. Maheshar Sahai* <sup>(3)</sup>. When the appeal Court gives notice to the respondent it is to be presumed that the day fixed as the day of hearing in the notice is the day on which the appeal will be heard and disposed of. Section 551 of the Code gives the Court power of confirming the decision of the lower Court without giving the respondent any notice if the appellant is present on that day. If the appellant is present, and the respondent does not appear, the Court would give an *ex-parte* decision under section 100, for under section 582 the procedure of the appeal Court is to be the same as that of the original Court. If objections are not filed seven days before the day fixed for hearing, which is the day mentioned in the notice to the respondent, unnecessary delay will be caused to the appellant by the neglect of the respondent.

SARGENT, C. J.:—We think the Assistant Judge was wrong in refusing to entertain the defendant's cross objection. The cases of *Kally Prosunno Biswás v. Mungala Dasse* <sup>(4)</sup> and *Deo Kishen v. Maheshar Sahai* <sup>(3)</sup> undoubtedly support his view, but we find ourselves unable to follow those cases in the construction placed on the words "the day fixed for the hearing of the appeal." By section 552 of the Code of Civil Procedure, the Appellate Court is to fix a day for hearing the appeal. Section 555 contemplates the possibility of the hearing being adjourned to another day. Section 557 contemplates the case in which the respondent has not been served with notice of appeal, and provides that, in that case, when the appeal comes on, whether on the day so fixed in the notice or on that to which the hearing may have been adjourned, the appeal shall be dismissed. But the clause provides for

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(1) I. L. R., 8 Bom., 559.

(3) I. L. R., 4 All., 249.

(2) L. L. R., 9 Calc., 631.

(4) I. L. R., 9 Calc., 631.

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this order not being passed if the respondent appears in person or by pleader or duly authorized agent on the "day fixed for the hearing," where it is plain, from the reason of the thing, that the expression must mean the day on which the hearing actually takes place, which may be either the day "so fixed," *i. e.* fixed in the notice, or any other day to which the hearing may be adjourned. This section appears to us to show that the "day fixed" is carefully distinguished from the day "so fixed," *i. e.*, the day fixed in the notice. The "day fixed for the hearing" is the expression used in section 561, and should have the same meaning given it as it undoubtedly must have in section 557, *i. e.*, the day on which the hearing commences, and includes both that day and the day to which the hearing may be adjourned. In giving this meaning to the expression in section 561, we shall be giving adequate effect to what must be supposed to be the purpose of the section, *viz.*, to give the appellant timely intimation of the proposed objections. This would appear to be the view taken by West and Nánabhái Haridás, J.J., in *Rangildás v. Báí Girja* <sup>(1)</sup>. We must, therefore, send the case back for the Appellate Court to record a finding on the following issue:—

Whether the defendant was liable to pay two maunds of *thal* rent on the *thikan* *Moda urf* *Jai*?, and to transmit the finding to this Court within three months.

All other grounds of appeal reserved until the return of the above finding.

(1) I. L. R., 8 Bom., 559.

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.*

1886.

July 2.

LAKSHMAN VENKATESH, (ORIGINAL PLAINTIFF), APPELLANT, v.  
KA'SHINATH AND ANOTHER, (ORIGINAL DEFENDANTS), RESPONDENTS.\*

*Hindu law—Manager, decree against—Sale in execution of such decree passing his interest only—Such sale does not affect interest of the co-parceners not parties to the suit—Parties.*

A sale under a decree obtained against the manager of a Hindu family only passes the right, title, and interest of those who are parties to the suit.

\* Second Appeal, No. 553 of 1884.