

1903
JAN. 28.

APPEAL
FROM
ORIGINAL
CIVIL.

30 C. 528=7
C. W. N. 450.

On these grounds, the appeal must succeed with costs, and the probate granted must be recalled and kept in the record of this Court until the case is decided.

HILL, J. I am of the same opinion.

STEVENS, J. I am also of the same opinion.

Appeal allowed.

Attorney for the appellant; *Atul Chunder Ghose.*

Attorney for the respondent: *H. C. Ghose.*

30 C. 532 (=7 C. W. N. 550).

[532] APPELLATE CIVIL.

ABDUL HAKIM *v.* LATIFUNNESSA KHATUN.* [31st March, 1903].

Limitation—Registration—Suit to enforce registration—Limitation Act (XV of 1877) ss. 6, 14—Period of Limitation, computation of—Registration Act (III of 1877) s. 77.

An executant of a document not admitting execution, the Sub-Registrar refused to register it. There was an appeal to the Registrar, who also refused to register. Within thirty days of the dismissal of the appeal, an application for review was filed to the Registrar, which was also dismissed. On a suit brought in the Civil Court to enforce the registration of the document, after the dismissal of the said application for review:—

Held, that s. 14 of the Limitation Act had no application to the present case; and that the suit not having been brought within thirty days from the date of the dismissal of the appeal by the Registrar, it was barred by limitation.

Nogendra Nath Mullick v. Mathura Mohun Parhi (1) followed in principle; *Veeramma v. Abbiah* (2), *Girija Nath Roy v. Patani Bibee* (3) referred to; and *Khetter Mohun Chuckerbutty v. Dinabashy Shaha* (4) discussed.

[Ref. 34 All. 496; Appr. 47 Cal. 300.]

SECOND APPEAL by the plaintiff, Abdul Hakim.

This appeal arose out of an action brought by the plaintiff under s. 77 of the Registration Act to obtain an order for the registration of a deed of which registration was refused by the District Registrar. The plaintiff applied for the registration of a deed of gift by the legal heirs of a deceased Mahomedan lady who had executed the said deed. The heirs did not appear to admit execution, and the Sub-Registrar refused to register. There was an appeal to the Registrar, under s. 76 of the Registration Act, but the Registrar also, on the 4th May 1899, refused to register. [533] The plaintiff then applied to the Registrar for a review, and on the dismissal of that application on the 24th June 1899, instituted the present suit on the 20th July 1899. The defence mainly was that the suit was barred by limitation. The Court of first instance dismissed the plaintiff's suit, having held that it was barred by limitation. On appeal, the additional Subordinate Judge of Dacca affirmed the decree of the first Court.

* Appeal from Appellate Decree No. 1857 of 1900, against the decree of Girish Chunder Chatterjee, Additional Subordinate Judge of Dacca, dated June 12, 1900, affirming the decree of Hrish Chunder Sen, Munsif of that district, dated Nov. 14, 1899.

(1) (1891) I. L. R. 18 Cal. 368.

(2) (1894) I. L. R. 18 Mad. 99.

(3) (1889) I. L. R. 17 Cal. 268.

(4) (1883) I. L. R. 10 Cal. 265.

Babu *Harendra Narayan Mitter* for the appellant. The question is whether s. 14 of the Limitation Act has any application to the present case. I submit s. 14 of the Limitation Act applies, and I am entitled to the exclusion of time for review. [MACLEAN, C. J. How does the review section of the Civil Procedure Code apply?]. There is some difficulty about it. [MACLEAN, C. J. If the review section of the Code does not apply, I doubt very much whether section 14 of the Limitation Act applies.] Even assuming that the review section of the Code does not apply, but as I was prosecuting in good faith the proceeding in a Court which from defect of jurisdiction was unable to entertain it, I am entitled to exclude the time. [MITRA, J. How do you get over s. 6 of the Limitation Act?]. By referring to the case of *Khetter Mohun Chuckerbutty v. Dinabashy Shaha* (1). The Court below was wrong in holding that the suit was barred because the application for review was not based upon the same cause of action. [MACLEAN, C. J. Your proper remedy would have been to bring a suit within 30 days, and not to make an application for review.] Section 75 of the Registration Act says that, for the purposes of any equity under s. 74 of the Act, the Registrar may summon and enforce the attendance of witnesses and compel them to give evidence, as if he were a Civil Court. If it is a Court for the purpose of that enquiry, all the procedure of the Civil Procedure Code would apply, and therefore an application for review could be entertained by the Registrar. See the case of *Reasut Hossein v. Hadjee Abdoolah* (2). In the case of *Atchayya v. Gangayya* (3), it has been held that a Registrar acting under the Registration Act, ss. 55, 72—75, is a Court [534] for the purposes of s. 195 of the Criminal Procedure Code. That being so, a Registrar is a Court for all purposes. [MACLEAN, C. J. Does s. 14 of the Limitation Act apply to proceedings under the Registration Act, wherein special period of limitation is provided for?]. Yes, My Lord, on that point, the case of *Khetter Mohun Chuckerbutty v. Dinabashy Shaha* (1) is in my favour. In the case of *Veeramma v. Abbiah* (4) opposite view has been taken to that of the Calcutta case. The case of *Nijabutoolla v. Wazir Ali* (5) supports my contention. The view taken in I. L. R. 10 Cal. 265, I. L. R. 8 Cal. 910, and I. L. R. 5 Cal. 314, has been followed in the case of *Guracharya v. The President of the Belgaum Town Municipalities* (6). No doubt in the case of *Girija Nath Roy Bahadur v. Patani Bibee* (7) the case of *Khetter Mohun Chuckerbutty v. Dinabashy Shaha* (1) was discussed and some doubt was thrown as to the correctness of the decision. The Full Bench case of *Nagendra Nath Mullick v. Mathura Mohun Parhi* (8) considered whether s. 14 of the Limitation Act would be applicable to suits for arrears of rent under Act X of 1859; but this is a case under the Registration Act, and the same principle does not apply.

Babu *Sarat Chunder Basak*, for the respondent, was not called upon.

MACLEAN, C. J. In this case the appellant applied for the registration of a certain deed of gift by the legal heirs of a deceased Mahomedan lady: the heirs did not appear to admit execution, and the Sub-Registrar refused to register. There was an appeal, and under section 76 of the

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(1) (1883) I. L. R. 10 Cal. 265.
(2) (1876) I. L. R. 2. Cal. 131 ; L.
R. 3 I. A. 221.
(3) (1892) I. L. R. 15 Mad. 138.
(4) (1894) I. L. R. 18 Mad. 99.

(5) (1892) I. L. R. 8 Cal. 910.
(6) (1884) I. L. R. 8 Bom. 526.
(7) (1889) I. L. R. 17 Cal. 268, 266.
(8) (1891) I. L. R. 18 Cal. 368.

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Registration Act, the Registrar also refused to register. That order was made on the 4th of May 1899. The appellant, as is found by the Lower Court, instead of coming to the Civil Court under section 77, within the thirty days prescribed by that section, applied to the Registrar for a review, and on the dismissal of that application on the 24th of June 1899 instituted the present suit on the 20th of July of the same year.

[535] The question is, *first*, whether section 14 of the Limitation Act applies to the present case, and *secondly*, if so, whether, having regard to the nature of the application to the Registrar, the case came in within that section.

In my opinion the provisions of the Limitation Act do not apply to the present case. This case is governed in principle by the Full Bench case of *Nogendra Nath Mullack v. Mathura Mohun Parhi* (1), which is binding upon us. It is true that the decision there was in relation to another Act, and not under the Registration Act, but the same principle applies. That case was followed in the case of *Veeramma v. Abbiah* (2), where the matter was thoroughly gone into in a very careful judgment of that Court, and the same view was adopted. This decision is precisely in point, because it is in relation to the Registration Act which is now under discussion. The same view was in substance held by a Division Bench of this Court in the case of *Girija Nath Roy Bahadur v. Patani Bibee* (3). The appellant relies upon a case, *Khetter Mohun Chuckerbutty v. Dinabashy Shaha* (4), but, with every deference to the Judges who decided that case, I do not think that it can stand beside the Full Bench case (1) of this Court, to which I have referred. It is a feature in that case that section 6 of the Limitation Act, which is of the highest importance in deciding this question, is not even referred to by either of the learned Judges who decided that case; and that case did not meet with the approval of the Judges who decided the case of *Girija Nath Roy Bahadur v. Patani Bibee* (3). It is reasonably clear upon the authorities to which I have referred, and in which I concur, that the Limitation Act has no application to the present case, and the appeal must be dismissed with costs.

MITRA, J. I concur.

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Appeal dismissed.

30 C. 536.

[536] APPELLATE CIVIL.

GOPAL CHUNDER MANDAL v. BHOOBUN MOHUN CHATTERJEE.*

[8th January, 1903.]

Mesne profits, assessment of—Landlord and tenant, combined possession of—Costs.

Where the position of the plaintiff is that of landlord and tenant combined, and the defendant, a sub-tenant, notwithstanding a notice served upon him under s. 167 of the Bengal Tenancy Act, withheld possession from the plaintiff, the mesne profits must be assessed on the value of the crops raised by the defendant, and not upon the basis of the rent which the rightful owner had been realising from the tenants, before dispossession.

[Rel on 35 Cal. 1000=12 C. W. N. 550; Ref. 12 C. L. J. 285=7 I. C. 197; Dist. 5 N. L. R. 97.]

* Appeal from Appellate Decree, No. 1148, of 1900, against the decree of Karuna Das Bose, Subordinate Judge of 24-Pergunnahs, dated March 21, 1900, modifying the decree of Girish Chundra Sen, Munsif of Basirhat dated Aug. 4, 1899.

(1) (1891) I. L. R. 18 Cal. 368.

(3) (1889) I. L. R. 17 Cal. 263.

(2) (1894) I. L. R. 18 Mad. 99.

(4) (1883) I. L. R. 10 Cal. 265.