

The opinion of the High Court was delivered by

1869.

MOHAN CHAND
KANDU
P.
AZIM KAZI
CHOWKIDAR.

PEACOCK, C. J.—We are of opinion that the defendant in the original suit having died before the filing of the plaint against him, the Court had no jurisdiction to decide upon the case. Under these circumstances the time during which the suit was being prosecuted *bonâ fide* and with due diligence against the dead man, may be deducted in calculating the period of limitation against his representatives. It will be for the Judge to determine whether the plaintiff was suing the deceased *bonâ fide* and with due diligence, or whether he was wanting in due care and caution in not ascertaining whether the party against whom he was proceeding was dead.

The case of *Rajkishoree Dasse v. Bodunchunder Shaha* (1) is not applicable to case like the present.

1869

June 15.

Before Mr. Justice Kemp and Mr. Justice Glover.

LALJI SING (DEFENDANT) v. SYAD AKRAM SER AND OTHERS
(PLAINTIFFS.)*

Admission of Unstamped Document in Evidence—Rejection on Appeal—Payment of Penalty—Act X. of 1862, ss. 15, 17—Act VIII. of 1859, s. 356.

When the Court of first instance admitted without objection unstamped receipts in evidence, but the Judge on appeal rejected the documents and reversed the decision of the lower court, *helt*, that the documents once received without objection were wrongly rejected, and the decision below wrongly reversed on appeal, as the irregularity was not one affecting the merits of the case under section 359, Act VIII. of 1859; and that the Court had no power to receive the documents on payment of the stamp duty and penalty under section 17, Act X. 1862.

Section 17 of Act X. of 1862 only applies to the reception of documents under section 15, which have been insufficiently stamped, not to documents on which there is no stamp. Such documents should not be received at all.

Baboo *Gopal Lal Mitter* and *Him Chandra Banerjee* for appellant.

Munshi *Mohammed Yusaff* for respondents.

* Special Appeal, No. 563 of 1865, from a decree of the Judge of Patna, dated the 18th December 1858, affirming a decree of the Deputy Collector of that district, dated the 6th October 1858.

1869
 LALJI SING
 v.
 SYAD AKRAM
 SER

THE facts and arguments sufficiently appear in the judgment of GLOVER, J.—This was a suit to recover a sum of rupees 713, arrears of rent for the year 1275. The defence was that all the rent had been paid, except rupees 84-12.

The first Court gave plaintiff a modified decree for 337 rupees. But the Judge, considering that the receipts not having been stamped, were not receivable as evidence, disbelieved the oral evidence in support of the plaint, and gave a decree to the plaintiff in full.

It is objected in special appeal, 1st, that under the provisions of section 350, Act VIII. of 1859, the Judge was not justified in rejecting the receipts, and that in any case he ought, under the provisions of Act X. of 1862, to have given the parties filing those documents an opportunity of paying in the sum necessary for stamping them, together with usual penalty provided for in the Act; secondly, it is objected that the judgment of the lower Appellate Court is wholly unintelligible, and is contrary to the terms of section 259 of the Civil Procedure Code; and thirdly, that with reference to the payment said to have been made to Shujaat Ali, the Judge was wrong in dismissing the appeal on the ground that Shujaat Ali was not authorized to receive rents for the plaintiff.

With regard to the first objection, the special appellant appears to be in error in supposing that the Judge could have rectified the want of stamps on the receipts. Section 17 of the Stamp Act does undoubtedly say that documents may be stamped on payment into Court of the proper amount of stamp duty. But this section refers distinctly to documents which are required to be stamped under section 15 of the Act, those namely which were already stamped, but had been executed on paper *insufficiently* stamped. There is no section of the Act which provides for the reception of documents which have not been stamped at all; such documents ought not to be received as evidence. Section 130 of Act VIII. of 1859 is much to the same effect. It also provides for the payment of stamp duty on papers insufficiently stamped, but does not allow documents which have not been stamped at all to be so received.

But with regard to the first part of the objection, we think that the special appellant's contention is correct. Section 350, Act VIII of 1856, distinctly lays down that no decree shall be reversed or modified, nor shall any case be remanded to the lower Court on account of any defect, error, or irregularity, which defect, error, or irregularity does not affect the merits of the case or the jurisdiction of the Court. In this case it is quite clear that the want of stamps on the receipts cannot affect either the merits of the case or the jurisdiction of the Court; and therefore we are of opinion that, although those receipts might have been very properly rejected by the first Court, still, being filed and accepted as evidence, the Judge was bound to consider them as evidence in the case.

There seems to be no reason to interfere with the Judge's decision on the second ground urged in special appeal.

With regard to the third ground, that is, the alleged payment made to Shujaât Ali, we think that the Judge was in error. It was never denied by the plaintiff that Shujaât Ali was his servant, and it was never alleged that this person had no right to receive rents for his master; and we think, therefore, that the defendant is entitled to the benefit of having paid the sum of rupees 55 to Shujaât Ali, on behalf of his master the plaintiff.

The case must be remanded to the Judge, in order that he may take into consideration the evidence of the receipts, and pass a fresh decision with reference to the remarks made in this judgment.

Costs will follow the result.

1869

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