

1875

MUDDUN
GOPAL LALL

v.

MUSSAMUT
GOWRUN-
BUTTY.

GRIDHARI
LALL SAHOO

v.

MUSSAMUT
GOWRUN-
BUTTY.

to have a partition of the property, the partition must be subject to the mortgages of the three appellants to the extent of 8 annas of the entire property.

The appellants are entitled to their costs: but, 'as we cannot give a decree making the minors pay the costs, these costs will be declared a charge upon the property.

Appeals allowed.

FULL BENCH.

POOSUN LALL
SAHOO

v.

MUSSAMUT
GOWRUN-
BUTTY.

Before Mr. Justice Mcpherson, Officiating Chief Justice, Mr. Justice Jackson, Mr. Justice Pontifex, Mr. Justice Birch, and Mr. Justice Morris.

JAGARNATH SINGH (ONE OF THE DEFENDANTS) v. SHEWRATAN SINGH AND ANOTHER (PLAINTIFFS).*

1875
May 19.

Limitation—Appeal—Act IX of 1871, s. 13—Act VIII of 1859, s. 333

In computing the period of limitation prescribed for an appeal by s. 13 of Act IX of 1871 the time from which the period must be taken to run is the date of the decree appealed against: and the days which under that section may be excluded are only the days requisite for obtaining a copy of the decree.

But if in any case it is impossible for the appellant to obtain a copy of the decree, or to obtain a copy of the judgment, in time, the Court, if satisfied that the appellant is not to blame, may consider that there is sufficient cause within the meaning of s. 5, cl. b of Act IX of 1871, and may, on an application, admit the appeal after the period of limitation prescribed by the Act.

On this appeal being presented to be filed, it was sent up for orders by the Deputy Registrar with the following remarks:—

“This appeal is within time if a deduction be allowed of the period taken up in obtaining a copy of the judgment as it used to be before the new Limitation Law (Act IX of 1871) came into operation, the Court having then held in *Hossanee Begum v. Dumree Mahtoon* (1) that the term ‘decree’ in s. 333, Act VIII of 1859, included ‘judgment.’

*Special Appeal No. 1201 of 1875, from the Judicial Commissioner of Chota Nagpore, dated 2nd October 1874.

“ The 5th Bench has, however, since decided in *Horil Pattuck v. Bhowaneeram* (1) that, with reference to s. 13 of the new

1875

JAGANNATH
SINGH
v.
SHEWATAN
SINGH.

(1) *Before Mr. Justice Markby and Mr. Justice Birch.*

The 9th March 1874.

HORIL PATTUCK (PLAINTIFF) v. BHOWANEERAM AND OTHERS (DEFENDANTS).*

Limitation—Appeal—Act IX of 1871, s. 13.

In computing the period of ninety days under s. 13 of Act IX of 1871 for filing an appeal, the appellant is, as a matter of right, entitled to deduct the number of days required for taking a copy of the decree only. The word ‘decree’ in that section does not include the ‘judgment.’

Under the circumstances, however, the Court admitted the appeal although presented after time.

Baboo Anund Chunder Ghosal for the appellant.

The facts of this case are sufficiently set out in the judgment of the Court, which was delivered by

MARKBY, J.—In this case the judgment was delivered in the Court below on the 16th of September 1873. On the 1st of November the appellant asked for a copy of the judgment and decree. The judgment was delivered to him on the 24th, and the decree on the 19th. On the 7th of January he filed his appeal in this Court, and it was returned to him as being too late. An application is now made to us to admit the appeal.

The appellant contends that he is within time. From the 16th September to the 7th of January is one hundred and thirteen days. The law (Act of 1871 IX, s. 13 and Sched i, art. 163) says—that the time allowed for filing an appeal is ninety days from

the date of the decree appealed against; but that in computing the period of limitation the day on which judgment was pronounced and the time required for obtaining a copy of the decree, sentence, or order appealed against shall be excluded. Excluding the time occupied in obtaining copy of this decree,—namely, eighteen days,—the appellant would still be too late. The appellant, however, contends that the time required for obtaining a copy of the judgment is also to be excluded; and he argues that in the above provision of the law the word ‘decree’ includes the ‘judgment’ also. Considering that the word ‘judgment’ is used in the very same section as distinguished from ‘decree,’ I can hardly think this to be the case. The words ‘judgment’ and ‘decree’ are not generally used in the Code in the same signification, and when both are intended, both are expressed, as, for example, in s. 198. Nor do I think the sense of the section requires this construction. I think the main object of the section was to provide for any delay there might be in drawing up the decree after the judgment was pronounced, the exact form of a decree being often a matter of consideration and discussion after the judgment has been pronounced.

Of course if there were such delay that the appellant could not comply with the requirements of art. 163 he would have good ground for claiming the indulgence of the Court, but I do not think that, as a matter of right, he can claim to deduct more than the time required for obtaining a copy of the decree.

*Application for admission of special appeal.