

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Shah.

ACHUT RAMCHANDRA PAI AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, v. NAGAPPA BAB BALGYA AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

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July 24.

Civil Procedure Code (Act V of 1908), sections 107, 149; Order VII, Rule 11, clause (c)—Memorandum of appeal insufficiently stamped—Presenting the memorandum of appeal on the last day for filing—Court must give time for paying up deficiency.

A memorandum of appeal which required a Court fee stamp of Rs. 205 was stamped with an eight annas stamp and was filed in Court on the last day allowed by the law of limitation. The pleader on being questioned stated that he had no funds with which to pay the requisite stamp and requested the Court to give him time for making the necessary payment. The Court refused to grant the time applied for and rejected the memorandum of appeal. The plaintiff having appealed:—

Held, reversing the order, that the lower Court was in error in rejecting the memorandum of appeal, and that it ought to have granted time within which to supply the requisite stamp.

APPEAL from the order passed by C. V. Vernon, District Judge of Kanara, from the decision of J. A. Saldanha, Subordinate Judge at Kumta.

The plaintiff sued to recover Rs. 3,541 odd by sale of the mortgaged property. The suit was dismissed by the Subordinate Judge.

The plaintiff appealed to the District Court of Kanara. The memorandum of appeal required a Court fee stamp of Rs. 205: but it bore only a stamp of eight annas, because the pleader had not sufficient funds to pay the full amount. The memorandum was presented on the last day allowed by the law of limitation. The pleader requested the Court to give him time for pay-

* Second Appeal No. 520 of 1912.

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ing the deficiency. The Court, however, declined to give time and rejected the appeal on the following grounds:—

The Court holds that the provisions of section 149 were certainly not intended to be used, as appellant is trying to use them, for the purpose of extending the period of limitation, but solely for the purpose of enabling the Court to deal equitably with any *bond fide* misconception of the law as to valuation. No such *bond fide* misconception is alleged in the present case. Order VII, Rule 11, applies only to plaints, not to appeals. Mr. Kamat refers to the case of *Dhondiram v. Taba Savadan* (I. L. R. 27 Bom. 330). That case related solely to the institution of a suit by plaint. The case of appeal is expressly distinguished in *Hari Ram v. Akbar Husain* (I. L. R. 29 All. 749, 764 and 770). Section 582A of the Code of 1882 was clearly intended to limit the period of grace to be allowed by Court to cases in which the insufficiency of the stamp was caused by the mistake of the appellant. Section 582A does not appear in the new Code (Act V of 1908). Its place is taken by section 149, which gives the Court very wide discretionary powers.

The plaintiff appealed to the High Court.

G. P. Murdeshwar (with *K. H. Kelkar*), for the appellants:—The provisions of Order VII, Rule 11, of the Civil Procedure Code, 1908, which primarily refer to plaints, apply also to memoranda of appeals by section 107, clause (2) of the Code. The provisions of Order XLI, Rule 3, apply only to cases there specified. Section 149 of the Code applies to all documents and is not confined to plaints or memoranda of appeals.

V. R. Sirur, for the respondent:—Order VII, Rule 11, governs plaints, while memoranda of appeals are governed by Order XLI, Rule 3: An insufficiently stamped memorandum of appeal is not properly presented under Rule 1 of Order XLI and can be rejected under Rule 3 of the Order. See sections 6, 28 and 30 of the Court Fees Act, 1870. If Order VII, Rule 11, (corresponding to section 54 of the Civil Procedure Code of 1882) applied to appeals, then section 582A of the Code of 1882 would become superfluous. Section 582A is replaced in the new Code by section 149. The wording of the section is very wide: It should be read in

conformity with section 28 of the Court Fees Act, 1870. See also *Balkaran Rai v. Gobind Nath Tiwari*⁽¹⁾; *Chennappa v. Raghunatha*⁽²⁾; *Patcha Saheb v. Sub-Collector of North Arcot*⁽³⁾; *Yakutunnissa Bibee v. Kishoree Mohun Roy*⁽⁴⁾; *Moti Sahu v. Chhatri Das*⁽⁵⁾; *Huri Mohun Chuckerbutti v. Naimuddin Mahomed*⁽⁶⁾.

BACHELOR, J. :—The appellants before us were the plaintiffs in the original suit, and the trial Court made a decree against them. On the last day allowed by the law of limitation they filed their appeal in the District Court. The memorandum of appeal was, however, insufficiently stamped, and the plaintiffs' pleader on being questioned as to this replied that he had no funds with which to pay the requisite stamp, and requested that the Court would give him time within which to make the necessary payment. The District Judge refused to grant the time applied for, and rejected the memorandum of appeal.

The question before us is whether that was a right order. There can be no doubt, we think, that if the document presented had been a plaint and not a memorandum of appeal, the learned Judge's order of rejection would have been unsustainable. That appears to follow from the terms of Order VII, Rule 11 (c) which provides for the case of the presentation of a plaint written upon paper insufficiently stamped, and the provision of the law is that such a plaint shall be rejected only if the plaintiff on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court fails to do so. In the case of an insufficiently stamped plaint, therefore, it is clear that provided the insufficiently stamped paper be presented within the time allowed by the law of

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(1) (1890) 12 All. 129.

(2) (1891) 15 Mad. 29.

(3) (1891) 15 Mad. 78.

(4) (1891) 19 Cal. 747.

(5) (1892) 19 Cal. 780.

(6) (1892) 20 Cal. 41.

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limitation, the appellant is entitled as of right to demand from the Court that some further time, to be fixed according to the Court's discretion, shall be allowed to him in order that he may make up the deficiency in the stamp. In our opinion a memorandum of appeal stands on the same footing as a plaint for the present purposes. For section 107, sub-section 2 of the Code, which reproduces section 582 of the old Code, provides that the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein. Moreover, unless the authority to reject such a memorandum of appeal as this is referred to Order VII, Rule 11 (c), there is not, so far as we are aware, any authority to which such action of the Court could be referred.

Mr. Sirur for the respondents has urged that the rejection of a memorandum of appeal should be attributed not to Order VII, Rule 11 (c), but to Order XLI, Rule 3. It is true that this rule provides for the rejection of a memorandum of appeal in certain cases; but those cases are limited by the preceding rules to cases where the memorandum of appeal is defective in point of form or in respect of the grounds which it must contain, and this rule cannot, we think, be interpreted as covering a case where the memorandum of appeal is rejected by reason of insufficiency of stamp.

There is not, in our opinion, anything repugnant in this interpretation of the law. Admittedly, before the present Code was enacted, there was much divergence of opinion between the High Courts of India upon this and cognate points, and it may well be that in this difference of judicial opinion the Legislature thought well to adopt the principle that where the plaintiff or appellant was within time in the actual

presentation of his plaint or memorandum of appeal, though matters could not then be carried further owing to the document being insufficiently stamped, yet the party should be entitled to some further time for the payment of Court fees. It seems hardly necessary to observe that the obligation imposed by the law of limitation and the obligation to pay the requisite fees are matters which stand on a very different basis.

Then it was urged that this view of the law is in conflict with section 149 of the Civil Procedure Code. That section, however, is, as we read it, a general provision empowering the Court to extend the time for the payment of fees on any and all documents which may be presented to it. But when a particular document is a plaint or memorandum of appeal, then the Court's discretion must be exercised in accordance with the special provisions of Order VII, Rule 11 (c). Thereafter section 149 would come into play, and would operate to produce this effect, that upon the payment of the requisite fee within the time allowed by the Court, the document in respect of which such fee was payable would have the same force and effect as if such fee had been paid in the first instance. The learned Judge below in considering section 149 observed that it was intended "solely for the purpose of enabling the Court to deal equitably with any *bond fide* misconstruction of the law as to valuation". We are of opinion, however, that this is not the correct interpretation of section 149. First, there are no words in the section to countenance or warrant such a limited construction of it. Then the section as it stands is a section which in the new Code was substituted for section 582A of the old Code. Section 582A was apparently enacted with a view to remove what was considered to be the hardship caused by certain decisions of the Allahabad High Court, and

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that section provided for the validation of insufficiently stamped memoranda of appeals provided that they had been presented within the proper period of limitation and "the insufficiency of the stamp was caused by a mistake on the part of the appellant as to the amount of the requisite stamp". Under section 582A, therefore, the discretion of the Court was fettered by this limitation that the insufficiently stamped memorandum of appeal could not be validated unless the Judge was satisfied that the insufficiency arose from a mistake on the part of the appellant.

Turning now to section 149 of the present Code, it will be seen that these words of limitation are omitted from it, and the inference appears to be that the legislature by the new provision intended that the Court should have a free and unshackled discretion in this matter. There seems, therefore, to be no ground for the learned Judge's view that the concession referred in section 149 must be restricted to cases where there was a *bonâ fide* misunderstanding of the law as to valuation.

Finally, Mr. Sirur endeavoured to call in aid of his clients sections 6, 28 and 30 of the Court Fees Act, but these sections, in our opinion, have no application to the facts at present before us. For there is no question in this appeal of receiving, or filing, or exhibiting or acting upon an insufficiently stamped document as if it were sufficiently stamped, but of determining what, if any, opportunity the appellant can claim under the law for removing the objection on the score of the insufficiency of the stamp.

On these grounds we are of opinion that the order made by the learned Judge below must be set aside. We accordingly reverse it and remand the appeal to him to be decided in accordance with the foregoing observations and with the provisions of section 149.

and of Order VII, Rule 11 (c), after the learned Judge shall have required the appellants to supply the requisite stamp paper within a time to be fixed by the District Court.

The appellants must have the costs of this appeal.

Order set aside.

R. R.

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Before Mr. Justice Heaton and Mr. Justice Shah.

BACHARAJ NYAHALCHAND MARWADI (ORIGINAL DEFENDANT),
APPELLANT, *v.* BABAJI TUKARAM AVATI (ORIGINAL PLAINTIFF),
RESPONDENT.*

1913.

August 5.

Limitation Act (IX of 1908), section 19, Schedule I, Article 182, clause 5
—Written acknowledgment—Application made for certifying payments on
the decree acknowledging the decree as an outstanding decree—Step-in-aid of
execution.

The plaintiff obtained a decree on the 3rd July 1900 whereby he was required to pay a sum of Rs. 600 by annual instalments of Rs. 50 and to redeem the mortgaged land. The decree also provided that on failure to pay any two instalments the plaintiff's right to redeem was to be foreclosed and the defendant was to be placed in possession of the land. The instalments for 1901 and 1902 were duly paid, while the one for 1903 was only paid in part. No other payments were made. On the 20th July 1905, the plaintiff made an application to the Court, which was consented to by the defendant, for certifying the above payments in satisfaction of the decree. This application referred to the decree as an outstanding decree. On the 14th December 1907, the defendant applied to foreclose the decree; but the application was dismissed for want of prosecution. He applied again on the 29th March 1909 for the purpose; but his application was dismissed as barred by limitation. The defendant having appealed:—

Held, that the application was within time, for the application of 1905 was sufficient to give a fresh starting point for limitation, either as an acknowledgment within the meaning of section 19 of the Limitation Act (IX of 1908), or as a step-in-aid of execution under Article 182, clause 5 of the First Schedule to the Act.

* Second Appeal No. 895 of 1912.