

(1938) 03 CAL CK 0019
In the Calcutta High Court

Maharaja Bahadur Sir Prodyot Coomar Tagore	APPELLANT
Vs	
Mathura Kanta Das	RESPONDENT

Date of Decision : 22-03-1938

Acts Referred:

Bengal Tenancy Act, 1885 — Section 144(2)
Limitation Act, 1963 — Article 182

Citation : AIR 1938 Cal 533

Hon'ble Judges : Derbyshire, C.J;B.K. Mukherjea, J

Bench : Full Bench

Judgement

B.K. Mukherjea, J.—These are two appeals arising out of two orders passed in certain proceedings in execution of a rent decree. Appeal No. 192 of 1937 is directed against an order dismissing the decree-holder's application for execution on the ground that it was time-barred, whereas Appeal No. 193 of 1937 is against an order rejecting the appellant's application for amendment of the execution petition. The material facts may be shortly stated as follows: Maharaja Tagore, who is the appellant before us, instituted a rent suit against the respondent for recovery of arrears of rent due in respect of two tenancies held by the defendant as a tenant under him. The two holdings were separately described in the schedules to the plaint and there were two separate decrees passed by the Munsif on 13th May 1932 in respect of them under the provisions of Section 144 (2), Ben. Ten. Act. There were two appeals taken against these two decrees by the tenant defendant. The appeal in respect of the holding described in Schedule 2 of the plaint was heard and dismissed by the Appellate Court on contest on 1st December 1932. The other appeal which related to the holding of Schedule 1 was not registered at all as it was filed with deficit court-fees and as the requisite stamps were not put in within the time allowed by the Court the memorandum of appeal was rejected on 25th August 1932.

2. The present application for execution which was in respect of the Schedule 1 holding was filed by the decree-holder on 16th July 1935 and the objection taken by the judgment-debtor was to the effect that the execution petition was time-

barred, the starting point for limitation under Article 182, Lim. Act, being the date of the trial Court's decree which was 13th May 1932. The decree-holder wanted to get round this plea of limitation by bringing the case within the purview of Article 182, Clause (2), Lim. Act, and his contention, in substance, was that the decision of the trial Court having been challenged by way of an appeal, it is the Appellate Court's order rejecting the appeal on 25th August 1932 which should be taken as the starting point for the purpose of limitation under Article 182. As in the execution petition the number of the appeal and its date of disposal were incorrectly stated there was an application for amendment of the execution petition and for leave to insert the correct particulars. The trial Court decided both the matters in favour of the decree-holder. It held that the execution petition was not time-barred and that time would run from 25th August 1932 which was the date of the final order passed by the Appellate Court. It allowed the prayer for amendment also as the wrong entries according to the trial Court were the result of a bona fide mistake on the part of the decree-holder. On appeal by the judgment-debtor the lower Appellate Court has set aside both the orders of the trial Court. It has dismissed the decree-holder's application for execution and has also disallowed the prayer for amendment. It is against these two orders that these two second appeals have been preferred. As regards the main appeal which is Appeal No. 192 of 1937, Mr. Das who appears for the appellant has contended before us that the lower Appellate Court ought to have held that the facts of this case did attract the operation of Article 182, Clause (2), Limitation Act, and that the period of three years should be counted from 25th August 1932 which was the date of the final order passed by the Appellate Court.

3. Article 182, Clause (2), Limitation Act, provides that the time of three years which is allowed for execution of a decree, would run, when there has been an appeal from the decree, from the date of the final decree or order of the Appellate Court. The question therefore arises as to whether in the present case there was an appeal against the decree which was disposed of by any decree or final order of the Appellate Court. The Court of Appeal below relied in support of its decision upon certain pronouncements of the Judicial Committee in *Batuk Nath v. Mt. Munni Dei* AIR (1914) PC 65 *Harendra Lal Roy v. Haridasi Debi* AIR (1914) PC 67 and *Sachindranath Roy v. Maharaj Bahadur Singh* AIR (1922) PC 187. In all these cases the appeals to the Privy Council were dismissed by the Registrar for non-prosecution according to certain Standing Orders in Council and it was held that no fresh starting point for limitation would accrue from the date when this order of dismissal was passed. As Lord Moulton observed in one of these cases, the order dismissing the appeal for want of prosecution did not deal judicially with the matter of the suit and could in no sense be regarded as an order adopting or confirming the decision appealed from. In a later decision of the Judicial Committee, this point was discussed again and Sir George Lowndes who delivered the judgment of the Board pointed out that the principle enunciated in these cases would not apply, when the Appellate Court passed an

order holding that the appeal had abated, for that would be a judicial order finally disposing of the appeal and as such would give a fresh starting point for limitation under Article 182, Clause (2), Limitation Act.

4. In the case before us it appears that though a memorandum of appeal was presented to the Appellate Court it was neither registered nor numbered as an appeal. The Court allowed time to put in the deficit court-fees presumably u/s 149, Civil P.C., and Miscellaneous Case No. 77 of 1932 was started on the basis of this order. As the requisite court-fees were not put in within the time allowed the memorandum of appeal was rejected. In my opinion this order had not the effect of a decree and it did not deal judicially with the appeal at all which had not yet come into existence. It amounted merely to this that the appellant had not complied with the conditions under which alone he was competent to file an appeal and therefore, the position was exactly the same as if no appeal had been filed. The decision in AIR 1932 165 (Privy Council) which has been referred to by Mr. Das, does not in my opinion really assist his client. It may be that for purposes of Article 182 an appeal may not be a proper or a competent appeal. But once it is entertained and heard by the Appellate Court, the mere fact that the final order dismisses the appeal on the ground that it is incompetent in law is nonetheless a judicial order which finally disposes of the appeal. I am therefore, of the opinion that the view taken by the lower Appellate Court in this case is correct and this appeal must fail. As the petition for execution is held to be time-barred, even if it did contain the correct description regarding the number of the appeal and the date of its disposal the question of allowing the petition of amendment does not arise at all. The result is that both these appeals are dismissed with costs. The hearing fee is assessed at two gold mohurs for the two appeals.

Derbyshire, C.J.

5. I agree.