

(1907) 05 AHC CK 0003

Allahabad High Court

Case No: None

Babu and Another

APPELLANT

Vs

Anjora Kunwar

RESPONDENT

Date of Decision: May 18, 1907

Acts Referred:

- Limitation Act, 1963 - Section 5

Citation: (1907) ILR (All) 638

Hon'ble Judges: Aikman, J

Bench: Single Bench

Final Decision: Disposed Of

Judgement

Aikman, J.

The plaintiffs respondents sued to eject the appellant, a parda nishin lady, from a certain agricultural holding. A question of proprietary title was raised and decided by the Assistant Collector. Acting on the advice of his pleader the appellant's agent filed an appeal against the decision of the Assistant Collector in. the Court of the Commissioner. On the 3rd of April 1905, the Commissioner returned the appeal for presentation to the proper Court, holding that the appeal lay to the District Judge, The appeal was presented the same day to the District Judge. The District Judge rejected the appeal, refusing to consider what had occurred as sufficient cause for admitting the appeal under the provisions of Section 5 of the Limitation Act. Against that order the defendant has preferred this appeal. The case has been very ably argued before me by the learned vakils on both sides, who have cited all the authorities bearing on the point. No doubt in England erroneous advice on the part of a legal adviser has recently been held not to be a sufficient ground for admitting an appeal after due date (see In re Coles and Ravenshaw 1907 1 K.B. 1; but, as I take it, the law in India is not so strict. Section 14 of the Limitation Act provides that in computing the period of limitation for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a

Court of first instance or in a Court of appeal against a defendant, shall be excluded where the proceeding is founded upon the cause of action and has been prosecuted in good faith in a Court which from defect for jurisdiction or other cause of a like nature is unable to entertain it. A Full Bench of this Court has held that that section applies to a case where a plaintiff has been prosecuting his suit in a wrong Court in consequence of a bona fide mistake of law--see *Brij Mohan Das v. Mannu Bibi* ILR (1897) All. 348. It is true that Section 14 applies only to suits and not to appeals. But it has been held by this Court--see *Balwant Singh v. Gumani Ram* ILR (1883) All. 591 that the circumstances contemplated in Section 14 might, and ordinarily would, constitute a sufficient cause in the sense of Section 5, and the reason why Section 14 is limited to Courts of original jurisdiction is merely because the earlier section had given a larger and more unfettered power in the same behalf to appellate Courts. In the case of *Kura Mal v. Ram Nath* ILR (1906) All. 414 it was held that when a client bona fide accepts the advice of counsel as to the proper procedure to adopt in the course of litigation, and misled by that advice fails to file an appeal within time, he is entitled to the benefit of Section 5 of the Limitation Act. Following these rulings I have no hesitation in ruling that in the exercise of proper discretion the District Judge ought to have admitted the appeal u/s 5 of the Limitation Act. I set aside his order and remand the case to him under the provisions of Section 562 of the Code of Civil Procedure. I direct him to readmit the appeal under its original number in the register and proceed to dispose of it on the merits. I make no order as to the costs of this appeal.