

## Babu and Another Vs Anjora Kunwar

**Court:** Allahabad High Court

**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 bond 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 bond 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.