

Akbar Husaln Vs. Hari Ram

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Court : Allahabad

Decided On : Aug-13-1907

Reported in : (1907)ILR29All749

Judge : Knox, Acting, C.J., ;Banerji, ;Burkitt, ;Richards and ;Dillon, JJ.

Appellant : Akbar Husain

Respondent : Hari Ram

Judgement :

Knox, Acting, C.J.

1. The facts out of which the question raised in this appeal springs are as follows:
2. On the 29th of September 1906 the respondent instituted a suit in the Court of the Munsif of Amroha. He asked for a decree declaring his right of pre-emption over (1) a share of certain property which he described as muafi with zamindari in Thok Khurd; (2) a share of property described as muafi with zamindari together with a proportionate share of shamlat land in Patti Khwaja Bakhsh, Thok Kalan, and (3) all rights appertaining to the above-mentioned properties. For the purpose of determining the jurisdiction of the Court, he valued his claim at Rs. 800, which he said was the actual value of the property claimed by him, and he computed the fee payable under Act No. VII of 1870 in accordance with the provisions of Section 7, Clause (5), paragraph (c) of that Act. He stated the nett profits that had arisen from the land during the year next before the date of presenting his plaint as being

Rs. 45; he multiplied this sum by fifteen and paid an ad valorem fee upon Rs. 675 as set out in Schedule I of the Act. The Munsarim, to whom the plaint was presented, certified that the court fee paid was sufficient, and that the suit had been instituted within the period allowed by the law of limitation of 1877. The plaint was thereupon admitted and registered on the 29th of September 1907.

3. One of the pleas taken in the written statement was that the court fee paid was insufficient and that the suit was not cognizable by the Court. It was not stated by the defendant why or how the court fee paid was insufficient, nor was it stated what court fee was necessary under the provisions of Act No. VII of 1870.

4. The Munsif fixed an issue: 'Is the court fee paid insufficient?' Several witnesses were examined touching the point thus raised, and after considering them the learned Munsif found as follows: 'The properties sought to be pre-empted are muafi. and, therefore, the plaintiff has paid court fee on fifteen times the amount of the income. He puts the income of his properties at Rs. 45, and there is not much difference about that. But it is clear that there is a garden also in. the properties in dispute, and the plaintiff has neither given its separate value nor paid any court fee for that.... The plaintiff ought to have paid a separate court fee in proportion to his share of the garden claimed, but he has not done so. Besides this there is an income of Rs. 27 from market and nakhasa and the plaintiff has not mentioned it also. The plaintiff's witnesses were also compelled to admit that there is some income from market and the nakhasa. The patwari puts the income of the market at Rs. 48 per annum, but in my opinion it is somewhat exaggerated. Whatever may be the income from the market and the nakhasa, it will not make much difference at the present stage, because the plaintiff has totally ignored it and paid not even a single shell as its court fee. It may be said that the income of the market and the nakhasa is included in Rs. 45, but what about his garden? Court fees on groves ought to be paid on their actual price and not on fifteen times the amount of the profits. The plaintiff has given no value of the grove, and, therefore, I hold that the court fee paid by him is not sufficient.'

5. The learned Munsif, though asked, refused to grant time to make up any deficiency in the court fee and dismissed the suit.

6. In appeal the following pleas were taken: (1) The court fee paid is sufficient, the net profits of Rs. 45 include the profits from the bazaar, cattle market, &c.; (2) if in trying the suit the Court came to the conclusion that the court fee paid was insufficient, it should according to law have granted time to the appellant to make good the deficiency.

7. The Subordinate Judge who heard the appeal arrived at no finding upon the question whether the court fee had or had not been rightly computed, or whether or not the profits alleged by the appellants were correct. In his opinion the case was exactly on all fours with the case of Babu Lal v. Asi Kunwar (1904) I.L.R., 27 All., 197. He held that the Court should have allowed the plaintiff to make good the deficiency, though the time of limitation had expired. He accordingly set aside the decree of the Court below and remanded the case under Section 562 for trial on the merits. The pleas taken in this Court were that, as the period of limitation had expired, the deficiency in court fee could no longer be made good, and as there was no valid plaint on the file within the time prescribed by law, the Court of first instance had acted rightly in dismissing the suit.

8. The learned Judges before whom the case came were of opinion that the appeal should be heard and determined by a Full Bench of this Court, and the question which we have to consider in this case is whether a Court, which, after a suit has been admitted and registered, sees reason to think for any cause that the annual nett profits or the market value of the subject-matter of the claim have been wrongly estimated and thereupon proceeds to hold an inquiry, is bound, if the result of that inquiry shows the estimation to be insufficient, to give time to the plaintiff to pay in the additional fee, whether the time so given be or be not within the time allowed by the law of limitation for bringing the claim, and what is the result if the additional fee be paid within the time fixed by the Court? The learned vakil for the appellant contended that the provisions of Section 10 of Act No. VII of 1870 could only be applied to the special class of cases in which the Court has of its own motion issued a commission to a proper person directing him to make an investigation, into the amount of annual nett profits or market value of the subject-matter claimed, and not to cases, for instance, in which the Court has held a similar inquiry in person or in which it had arrived without inquiry upon a finding

that the fee payable in the suit had been wrongly computed. He further contended that for the last seventeen years, since the Full Bench of this Court had decided the case of *Balkaran Rai v. Gobind Math Tewari* (1890) I.L.R., 12 All., 129, this Court had drawn a sharp distinction between cases in which a document had been presented to a Court without being properly stamped through mistake or inadvertence of the party presenting it and cases in which the document had been through mistake or inadvertence of the Court received by the Court without being properly stamped. To the latter class of cases only had the indulgence allowed by Section 28 of the Court Fees Act been granted, and as regards the former class of cases it had been held that the Courts could not give time for paying in the additional fee beyond the period allowed by law for instituting the suit. His contention was that the present case was a case in which the Court had not held any investigation in the mode prescribed by Sections 9 and 10 of Act VII of 1870; further that the mistake in the court fee had been the act of the party and not of the Court, and therefore, as it was a case in which the suit had been barred by limitation at the time when the mistake was found out, time would not be given to the plaintiff to remedy the defect.

9. I shall first deal with the contention that Section 10 of Act No. VII of 1870 comes into play only when the Court has issued a commission under the preceding section to a proper person for the purpose of ascertaining the market value of the nett annual profits of an estate.

10. It is obvious in the first place that to admit this contention will involve the anomaly that a Court when it delegates its power of investigation to another person enjoys powers which it cannot exercise when it holds the investigation itself, and for this doctrine we know no authority.

11. On the other hand, the very fact that a Court is empowered to delegate certain powers to another is of itself proof that the powers thus delegated are powers with which the Court is itself armed.

12. In the second place an inquiry into the history of Sections 9 and 10 of the Court Fees Act shows that there is no foundation for any contention of the kind advanced by the learned vakil for the appellant.

13. At the time when Act No. VII of 1870 was placed upon the Statute Book the Act which regulated the procedure of Civil Courts was Act No. VIII of 1859. That Act contained a Section (section 180) which empowered Courts under certain special circumstances to issue a commission for certain purposes to an officer of the Court, directing him to make an investigation and to report to the Court. The ascertaining of either the market value of property or the nett annual profits of an estate was not one of those purposes. When Act No. VII of 1870 first became law, Section 9 stood as it stands now. But Section 10 at that time consisted of three clauses and the third clause ran as follows:

Section 180 of the Code of Civil Procedure shall be construed as if the words 'the market value of any property or' were inserted after the word 'ascertaining' and as if the words 'or annual nett profits' were inserted after the word 'damages.'

14. The object and meaning of this clause is evident. It was that Section 180, Act No. VIII of 1859, should be read as part of Section 10, Act No. VII of 1870. It empowered Courts in any suit in which the Court might deem a local investigation to be requisite or proper for the purpose of ascertaining the market value of any property or the amount of annual nett profits to issue a commission to a proper officer for the purpose of conducting the necessary investigation and to consider the report of the Commissioner. Upon the repeal of Act No. VIII of 1859, the Codes of Civil Procedure which followed in 1877 and in 1882, contained sections which re-enacted the provisions of Section 180, Act No. VIII of 1859, as amplified by Act No. VII of 1870, Section 10, Clause (iii).

15. They contained also an important addition to the effect (vide Section 392 of Act No. XIV of 1882) that such commission was only to issue when the investigation deemed necessary by the Court could not be conveniently conducted by the Judge in person.

16. The use of the word 'may' in Section 10 must not be overlooked. When these section is read with the incorporated Section 392 of the Code of Civil Procedure, the obvious inference is that the power of delegation was not to be exercised as a matter of course or on the mere requisition of a party to the suit. On the contrary, the language used shows thai the section was framed so as to discourage as

much as possible local investigation by a commissioner.

17. From 1870 onwards Clause (iii) of Section 10 of Act No. VII of 1870 stood side by side with the amplified Section 392 of the Code of Civil Procedure, until in 1891 the Legislature, on going through the Statute Book with the object of removing certain Statutes and portions of Statutes which were spent or had become unnecessary, expunged Clause (iii) of Section 10 as no longer necessary (Act XII of 1891, Schedule I). This then is the history of Sections 9 and 10 of Act No. VII of 1870, and from a study of it we can arrive at the following conclusions, viz.:

(1) As an ordinary rule when a Court considers it necessary to ascertain the market value, &c., of any property the law requires the Court to hold the investigation in person.

(2) Only when such investigation cannot be conveniently held by the Court in person is it to issue a commission to a proper officer to hold the investigation on its behalf.

18. This being so, I find it impossible to confine the operation of Section 10 of Act No. VII of 1870 only to investigations held by a Commissioner. This restricted interpretation is based upon the use of the word 'such' in the opening words of Section 10, Clause (i).

19. The object of the law may be in artistically expressed, but the intention evidently was to empower Courts to hold inquiry, and it was intended that they should do so preferentially themselves.

20. To interpret that language, so that if they did hold the inquiry themselves nothing would follow, but that if they held it by deputy most important results in favour of the plaintiff would follow, is contrary to the way in which Revenue Statutes should be interpreted and would lead to an absurdity.

21. I prefer the possible and more liberal interpretation that the word 'such' is meant to refer to any investigation held under Section 9, and that it applies to all investigations, both those held by a Court per se and those held per alium under its commission, whenever it sees reason to think that the annual nett profits or the

market value of any such land, &c.;, as is mentioned in Section 7, paragraphs 5 and 6, have or has been wrongly estimated.

22. In all such cases, if the estimation is found insufficient, the Court has no option but to require the plaintiff to pay the additional fee payable and to stay the suit until such fee is paid.

23. I hold then that Sections 9 and 10 of Act No. VII of 1870 govern all cases in which a Court may think it necessary to hold an inquiry into the market value of or the annual nett profits arising out of the property, the subject-matter of the claim, and whether that inquiry be by evidence taken on an issue raised by the defendant or by a local investigation held in person or by commission or otherwise.

24. But the next contention is that the Court can under Section 10 stay the suit only for such period, if any, as may remain unspent of the period prescribed by the Limitation Act of 1877 as the period within which the particular suit can be brought.

25. This contention is not based upon any words or expressions contained in Chapter III of Act No. VII of 1870. There are no direct or indirect words of limitation contained in either Section 9 or 10. If we read them as they stand and without reference to any Act or precedent, the powers given in them can be exercised at any time up to the passing of the decree in a suit. There is also no limitation in Section 392 of Act No. XIV of 1882, which must be read with these sections.

26. The contention is based upon the line of reasoning contained in the judgment delivered by the learned Chief Justice Sir John Edge in *Balkaran Rai v. Gobind Nath Tewari* (1890) I.L.R., 12 All., 129, and adopted by the other four learned Judges of this Court who sat with him to hear and determine that appeal. Briefly put that reasoning is that:

(i) The law, Section 6 of Act No. VII of 1870, prohibits a Court from receiving, filing or using a plaint unless that plaint has affixed to it a court fee of the proper value required by Act No. VII of 1870.

(ii) If the period prescribed by limitation does expire before such court fee is affixed, the plaint, when the court fee is affixed after that period has elapsed, is a

plaint to the hearing of which limitation is a bar, or, to put it in another form, that there will be in this last mentioned case 'no valid suit as to the merits of which the Court can give a decision.'

(iii) It is only in those cases where an order can lawfully be made under Section 28 of the Court Fees Act that the principle of nunc pro tunc can be applied and the plaint treated as if it had been properly stamped in the first instance.

27. Beyond all doubt any line of reasoning which found favour with the Judges who decided *Balkaran Rai v. Gobind Nath Tewari* is entitled to great respect and consideration. But it must always be remembered in considering *Balkaran Rai's* case that the conclusion arrived at in *Balkaran Rai v. Gobind Nath Tewari* is the opposite of that arrived at by the Full Bench of this Court in another case, *Chedi Lal v. Kirath Chand* (1889) I.L.R., [11] All., 628. The view that found favour with the Judges in the case first named was put forward by the learned vakil for the appellants in the latter case, but the learned Judges held unanimously that 'if a document which ought to bear a stamp under the Court Fees Act has been used in the High Court, and the mistake or inadvertence, which permitted its reception in a lower Court without being properly stamped, comes to light in the High Court, any Judge of that Court may, under Section 28 of the Court Fees Act, direct that it should be properly stamped.' Further that 'when a proper order has been made and carried out, the original mistake and inadvertence and all subsequent consequences of such mistake or inadvertence are cured.'

28. In *Balkaran Rai's* case, as the learned Chief Justice pointed out at page 147 and again at page 150, 'sections 10 and 11 of the Court Fees Act relate to suits and do not relate to appeals.' *Balkaran Rai's* case was the case of a memorandum of appeal which had been insufficiently stamped and the force and value of Sections 9 and 10 was not in question.

29. Apart, however, from these considerations, and with the utmost respect to the Judges who decided that appeal, I find myself unable to follow them when they make Act No. VII of 1870, which is an Act dealing with purely fiscal matters, and the main object and intent of which is to prevent the Government being defrauded of the fees prescribed by it, act and react upon the Indian Limitation Act of 1877.

The law upon the subject of stamps is altogether, says Taunton, J., in *Morley v. Hall* (1834) 3 Dowl., 494, 'positivi juris, it involves nothing of principle or reason, but depends entirely upon the language of the Legislature.' In interpreting Act No. VII of 1870 the safest canon of construction is perhaps that very lately laid down by Lord Russell, Chief Justice, in *Attorney General v. Carlton Bank* [1899] 2 Q.B., 164, viz. 'to give effect to the intention of the Legislature as that intention is to be gathered from the language employed having regard to the context in connection with which it is employed.' To introduce limitations from other Acts, when no such limitations are even suggested in the context, is in so many words to legislate. Looking only at the Act and the context in which the sections of the Act which we have to construe stand, we shall find that Section 6 did intend that a plaint was not to be received in any Court of Justice unless the court fee prescribed by the Act had been paid upon it. The Legislature, however, foresaw that plaints may and will be received about which a doubt will arise and regarding which inquiry will show that the whole of the court fee prescribed has not been paid. They thereupon enacted Sections 9 and 10 giving a Court power to remedy the defect and to carry out the intention and object of the Act that the Revenue shall not be defrauded and that the full court fee shall be paid before the hearing is further proceeded with, whatever be the stage at which the hearing may have arrived when the mistake is detected. I cannot bring myself to believe, as I have to do if I adopt the contention now under consideration, that the Legislature ever intended that a Court should say to a plaintiff: 'I will not proceed further with the case until you pay the requisite court fee,' and that, when the fee had been realized, should then and there say to the plaintiff: 'Your suit is dismissed, because the deficient court fee has not been paid in till after the period of limitation had expired.' To any such proceeding on the part of a private individual we should attach the stigma of fraud.

30. Besides, even if the Statute of Limitation is to be in any way woven into this Act, and in the absence of clear words for that purpose I am not prepared so to hold, what does that Statute say? This, too, is a Statute which places restraint upon the rights of individuals and has to be construed in the light derived from its own text and not by the aid of any light borrowed aliunde, It runs as follows: 'Every suit (section 4) instituted after the period of limitation prescribed therefor, shall be dismissed.' Then follows an explanation showing what is meant by the word

'instituted.' When a plaint is presented to the proper officer (Act No. XV of 1877, Section 4, explanation), the suit in which it is the plaint is instituted. No words are used to qualify the word 'plaint' and to say that it must be a plaint stamped in accordance with the provisions of Act No. VII of 1870, Section 6.

31. When the plaint, whatever its defects, is presented to the proper officer, the suit is then and there instituted, and once it has been instituted within the time prescribed, the suit escapes from the bar of limitation, unless such bar be one in existence prior to institution. What right have we to add in Act No. XV of 1877, Section 4, the words 'sufficiently stamped' to the word 'plaint?' See *Musammatt Bega Begam v. Syed Yusaf Ali N.W.P., H.C., Rep., 1874, 139.*

32. So again, if it had been intended that the question of limitation should enter into Section 10, Clause (ii), I should expect to find the words 'subject to the provisions of the Law of Limitation' inserted into it.

33. The metaphor used by the learned. Chief Justice at page 142 of the report of *Balkaran Rai v. Gobind Nath Tewari* has been in my opinion extended by him too far. He says: 'In my opinion an appeal cannot be said to be presented within the meaning of Section 4 of the Indian Limitation Act, 1877, when the only presentation of the appeal is the tendering to the Court of a document, which the Legislature has specifically enacted shall not be regarded by a Court as of any validity, and the tendering to my brother Brodhurst on the 9th November 1877 of a document which the law says shall be regarded as of no validity, was no more a presentation of an appeal than would the tendering to him of a blank piece of paper have been a presentation of an appeal. In one case he could see nothing on the paper, in the other case the law had forbidden him to see anything on it.'

34. But is it correct to say that the law has forbidden him to see anything on it? He must see all or nearly all that has been written on it before he can judge whether the proper court fee has been paid. He may receive it, register it, and then, if a doubt arises upon this matter, he will have to examine it very carefully and make that very paper the basis of an investigation. I, therefore, see no necessity for going outside and beyond the plain words contained in Sections 9 and 10, or indeed for praying in aid Section 28, which belongs to the Chapter in the Act which

deals with the mode of levying fees. The suit has been instituted within time, the King's fee for hearing the suit has been realized and the suit stayed can proceed. Even if the fee is not paid, the suit is dismissed, but the plaint is not taken off the file. It will remain received and filed until the record or the portion of the record containing it is destroyed.

35. Section 28 is a universal section and embraces a far wider area than Sections 9 and 10. It applies to all cases in which any document is through mistake or inadvertence received, filed or used in any Court without being properly stamped, and is useful in putting still further beyond doubt the validity of a plaint stamped either under Section 10 or Section 28 of the Act.

36. It opens with the very positive words: 'No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.'

37. But those words can only refer to what is to happen after it has been discovered that a plaint has been insufficiently stamped. No one would contend that after a suit had been fought to the end and a decree obtained from the highest tribunal, and the decree executed, that then, if it be discovered that the plaint has not been properly stamped, the whole proceedings can be attacked on the ground that the plaint had no validity, as it can be where fraud is discovered. If the mistake is discovered before decree, the plaint has no validity unless and until it is properly stamped and the suit cannot proceed one step further.

38. But assuming that Section 28 is in any way needed to complement and complete Section 10, it is contended farther that Section 28 applies only when the document, i.e. the plaint in this case, has been received by mistake or inadvertence of the Court. The answer to this contention comes out of the same quiver that provided the arrow of contention. I find at page 147 the learned Chief Justice saying: 'The application of Section 28 would not be inconsistent with the provisions of Section 10 or Section 11. Cases coming within Section 10 or Section 11 of the Court Fees Act would arise only where through mistake or inadvertence of the Court a plaint, which subsequently was discovered to be insufficiently stamped had been received, filed or used in the Court. No such Court would

knowingly receive, file or use a plaint which was insufficiently stamped, in contravention of the express prohibition of Section 6 of the Court Fees Act.' The logical deduction from this is: Therefore every document so received is received by mistake or inadvertence of the Court. The mistake may in its origin be the mistake of the plaintiff; by the time the plaint has been registered, the mistake has become the mistake of the Court. If the Court or the Munsarim discover the plaintiff's mistake before registration of the plaint, the plaint would at once be rejected under Section 54 of the Code of Civil Procedure and never registered at all.

39. I hold, therefore, that Section 28 is subject to no such limitations as are contended for. When it has been discovered at any time that through mistake or inadvertence a plaint has been filed on an insufficient court fee stamp, any Judge who discovers the mistake can at any time and without any regard to limitation have the proper court fee made up, and that when it is so made up, the plaint is valid as if it had been properly stamped when presented.

40. In this view it is really immaterial to consider whether when a mistake is discovered after registration there has been any mistake on the part of the plaintiff.

41. I was first impressed by the contention that if there be nothing in the plaint to put the Court or the Munsarim of the Court on its or his guard there can be no mistake or inadvertence so far as the Court or Munsarim is concerned. But what is a mistake? It is not mere forgetfulness, it is a slip, made not by design but by mischance--Esher, M.R., in *Barrow v. Isaacs* (1891) 1 Q.B., 417, Russell, C.J., in *Sandford v. Beal* (1895) 65 L.J.Q.B., 74 and 'mistake or inadvertence' as interpreted in *Doe dem Blewitt v. Phillips* (1841) 1 Q.B., 96.

42. But I find on examining most of the cases cited in this behalf that the mistake held to be that of the plaintiff might reasonably be held to be the mistake of the Court. Thus *Muhammad Ahmad v. Muhammad Sulaiman* (1901) I.L.R., 23 All., 423 was a case in which the plaintiff made an arithmetical mistake in calculating the net profits. It appear from the judgment that the officer of the Court, when he checked the plaint, could, if he had gone over the plaintiff's calculation, have discovered the mistake. I am unable to hold with the learned Judges who decided

that case that it was not the duty of the Munsarim to check the plaintiff's calculation. Rule 12 of the Rules and orders of the 4th of April 1894 lays down: 'A Munsarim of a Civil Court appointed to receive complaints shall examine each complaint presented to him, and shall report thereon whether the provisions of Acts Nos. VII of 1870 and XIV of 1882 have been observed, and whether the claim is within the jurisdiction of the Court and has been presented within the period prescribed for the institution of such a suit.' There was certainly material which, if examined, would have put him on his guard. It is not the intention of the law or of the Rules of the Court that a munsarim's inquiry should be a piece of perfunctory routine. It seems to me that if ever a complaint was received by the mistake and inadvertence of the Court, the complaint in this case was so received, and that Section 28 of the Court Fees Act did apply, even if its application hangs upon a mistake by the Court.

43. In *Chatarpal v. Jagram* (1905) I.L.R. 27 All., 411 the learned judges followed, and apparently unwillingly, the ruling just cited.

44. In *Ram Tahal Singh v. Dubri Rai* (1906) I.L.R., 28 All., 310 the mistake was not discovered till the case had gone into appeal, and the mistake however it arose, was, it seems to me, the mistake of the Court. The Munsarim of Azamgarh must know that a large number of villages in that judgeship are permanently settled and should have been on his guard. One question to the plaintiffs would have discovered the defect.

45. The case of *Dilawar Husain v. Bhagwat Das* Weekly Notes, 1907, p. 68 is the case of a memorandum of appeal insufficiently stamped and is, therefore, distinct from the present case.

46. The cases of *Babu Lal v. Asi Kunwar* (1904) I.L.R., 27 All. 197, *Chunni Lal v. Ajudhia Prasad* (1897) I.L.R., 19 All., 240, *Ghasi Ram v. Har Gobind* Weekly Notes, 1907, p. 18, *Hasibunnissa v. Ghafur-ullah Khan* (1907) I.L.R., 29 All., 382 and this last is the judgment of a Full Bench of this Court, which were relied upon by the learned Counsel for the respondents, follow the principles laid down in this judgment and have been in my opinion rightly decided.

47. The learned vakil for the appellants, Munshi Gokul Prasad, to whom we are indebted for a very careful and very exhaustive argument in the case, drew our attention to the Full Bench Ruling of this Court in *Jainti Prasad v. Bachu Singh* (1893) I.L.R., 15 All., 65. But in that case the Court had to deal with a plaint in which the mistake was discovered before the plaint was registered. That is a case quite distinct from the one before us and provided for by Section 54 of the Civil Procedure Code. It was dealt with under that section, and all that we are concerned with in it is that Sections 9 and 10 of the Court Fees Act, 1870, were held not to apply. If that was a correct decision it manifestly has nothing in common with the present case, in which I hold Sections 9 and 10 of the Court Fees Act were rightly applied.

48. I, therefore, hold that when a plaint has been registered and a Court, having reason subsequently to think that the market value nett annual profits of the subject-matter of the claim has been wrongly estimated, holds an inquiry either per se or through a Commissioner appointed for the purpose, and finds that a sufficient court fee has not been paid, it is bound to stay the suit and to fix a time within which the additional fee can be paid, without any regard to the fact whether that be a time within or beyond the period of limitation prescribed for the suit. If the fee is paid within the time so fixed, the plaint is as valid as if it had been properly stamped in the first instance on the day when the suit was instituted. The lower appellate Court in the present case should have arrived at and recorded a definite finding on the first issue raised in the appeal before it, viz. whether or not the subject-matter of the suit had been rightly valued and the proper court fee affixed. If it finds that the proper court fee was affixed, it will remand the suit under Section 562 of the Code of Civil Procedure for decision on the merits. If it finds that the court fee has been undervalued, it will state what it finds to be the proper market value and the proper amount of the nett profits and will remand the case to the first Court with a view to its taking action as prescribed in Section 10, Clause (ii) of the Court Fees Act.

49. The appeal is so far decreed that the order of the lower appellate Court is set aside upon the preliminary point and the appeal is remanded to that Court with directions to readmit the appeal upon its file of pending appeals and to determine it

upon its merits in accordance with what has been set out above. Each side will bear its own costs in this Court.

Banerji, J.

50. This appeal arises in a suit for pre-emption which was dismissed by the Court of first instance. The lower appellate Court has set aside the decree of that Court and has remanded the case. From this order of remand the present appeal has been lodged.

51. The property claimed is a third share of certain muafi and zamindari and was valued for purposes of court fees, under Section 7, Clause (v), Sub-clause (c) of the Court Fees Act, on fifteen times the nett profits, which the plaintiff stated to be Rs. 45. The officer of the Court reported that the plaint was sufficiently stamped, and it was admitted and entered in the register of civil suits. The defendant in his written statement took the plea, among others, that the plaint was not sufficiently stamped. Thereupon the Court framed the issue: 'Is the court fee paid insufficient?' It took evidence and came to the conclusion that the profits of the property had been under-estimated by the plaintiff, and that the court fee paid was insufficient. It did not declare the amount of the deficiency and it did not require the plaintiff to make it good, but dismissed the suit on the ground that on the date on which it found the amount of court fee to be insufficient, the period of limitation for the institution of a suit for pre-emption had expired. The correctness of the finding of the Court of first instance was impugned in the appeal preferred by the plaintiff to the lower appellate Court, but that Court came to no conclusion on the point, and relying on the ruling of this Court in *Babu Lal v. Asi Kunwar* (1904) I.L.R., 27 All., 197 remanded the case to the Court of first instance. The learned vakil for the appellants has addressed to us a very able argument and has laid before us all the rulings of this Court on the point. He contends that Sections 910 and 28 of the Court Fees Act should be read together; that Section 9 only applies to cases in which the Court takes action of its own motion; that Section 10 applies to those cases only in which a commission has been issued by the Court under Section 9, and that under Section 28 additional court fees can only be received in cases in which a document insufficiently stamped has been received through the mistake or

inadvertence of the Court or its officer. He relies on the judgment of the Full Bench in the case of *Balkaran Rai v. Gobind Nath Tewari* (1890) I.L.R., 12 All., 129. In that case the learned Chief Justice Sir John Edge, whose judgment was concurred in by the other learned Judges, held that 'the mistake or inadvertence in Section 28 must mean mistake or inadvertence on the part of the Court or its officer, and not mistake or inadvertence on the part of an appellant or his advisers.' In so holding the learned Chief Justice read into the section words which found no place in it. On the strength of this ruling it has been held in several cases that a distinction must be made between the 'mistake or inadvertence' of the Court or its officers and that of a party. As to what constitutes a mistake or inadvertence on the part of the Court or its officers, the rulings are not very consistent. It was held, for example, in *Muhammad Ahmad v. Muhammad Siraj-ud-din* (1901) I.L.R. 23 All., 423 that the omission of the Munsarim to detect an arithmetical error in the plaint was not a mistake or inadvertence on the part of that officer, a view which in my opinion it is impossible to agree with. In all these cases a very important part of the judgment in the case of *Balkaran Rai* does not appear to have been duly considered. In deciding the question whether Section 28 was inconsistent with the provisions of Section 9 or Section 10 of the Court Fees Act the following observations were made by the learned Chief Justice at page 147: 'The application of Section 28 would not be inconsistent with the provisions of Section 10 or Section 11 (he evidently meant Section 9 or Section 10). Cases coming under Section 10 or 11 of the Court Fees Act would arise only where through mistake or inadvertence of the Court a plaint which subsequently was discovered to be insufficiently stamped had been received, filed or used in the Court. No such Court would knowingly receive, file or use a plaint which was insufficiently stamped, in contravention of the express prohibition of Section 6 of the Court Fees Act.' It is clear from the above remarks that the learned Judges held in that case that when, after a plaint has been received and admitted, it is discovered to have been insufficiently stamped, the plaint must be deemed to have been received, filed or used through the mistake or inadvertence of the Court, and Section 28 would apply. This is further manifest from the following passage in the judgment of the Full Bench in the later case of *Jainti Prasad v. Bachu Singh* (1893) I.L.R. 15 All., 65, at p. 73: 'No doubt cases, do occur in which after the plaint has been admitted

and has been brought upon the file, which we understand to mean registered, it is discovered that the stamp is not sufficient, and that the plaint has been received and filed through inadvertence or mistake on insufficiently stamped paper. In the latter case upon the plaint being properly stamped in accordance with an order of the Court under Section 28 of the Court Fees Act, the plaint would be as valid as if it had been properly stamped in the first instance and consequently would remain with its original date on the file of the Court.' According to these rulings, therefore, Section 28 will apply to cases in which a plaint has been admitted and is subsequently found to have been insufficiently stamped.

52. The same result arises from a consideration of Sections 9 and 10. Under the former section the Court is empowered to make an investigation, 'if it sees reason to think that the annual nett profits or the market value... have or has been wrongly estimated.' And Section 10 directs that if the Court finds that the nett profits or the market value have or has been wrongly estimated and the estimation has been insufficient it shall require the plaintiff to pay additional fees within a time to be fixed, staying the suit until the additional fee is paid; and it is only when the plaintiff fails to pay the additional fee that the suit should be dismissed. It necessarily follows that when the additional fee has been paid the Court will proceed with the suit as if the plaint had been validly stamped when presented. There is nothing in Section 9 to indicate that the action which the Court may take under it must be of its own motion and not upon objection raised by the defendant, and that the Court cannot take proceedings under it at any stage of the suit. The language of the section is wide enough to enable a Court to hold an investigation whenever it has reason to think that an error has been committed in the valuation of the suit for purposes of court fees. The whole scope of the Court Fees Act shows that it is the duty of the Court to ensure payment of the stamp revenue, and for this purpose the Court may make an investigation either of its own motion or on being moved by a party to the suit. And it seems to me that it was intended by the Legislature that when the proper amount of the revenue has been realized in accordance with the provisions of the Act, the document which had been insufficiently stamped becomes perfectly valid. I am unable to agree with Mr. Gokul Prasad's contention that the Court itself cannot hold an investigation under Section 9, but must issue a commission, and that it is only when a commission has been issued that Section

10 applies. The provisions of the Court of Civil Procedure were made applicable to such an investigation by Clause (iii) of that section, which has since been repealed by the general Repealing Act of 1891, as Section 392 of the present Code of Civil Procedure (Act XIV of 1882) distinctly provides for the issue of a commission for the purpose of ascertaining the annual nett profits of the property in dispute. Under Section 392 a commission to make a local investigation may be issued if the investigation 'cannot be conveniently conducted by the Judge in person.' Further, as the learned Acting Chief Justice has pointed out, the power of delegation of authority necessary implies existence in the Court of the authority which it delegates. It is clear, therefore, that an investigation may be made under Section 9 of the Court Fees Act by the Court itself, and I see no valid reasons for holding that Section 10 does not apply when such an investigation has been made. In my opinion Section 10 is applicable to a case like the present, and I agree with the ruling in *Babu Lal v. Asi Kunwar* (1904) I.L.R., 27 All., 197. In *Jainti Prasad v. Bachu Singh* (1893) I.L.R., 15 All., 65, the error was detected at the time of the presentation of the plaint and before its admission. That case is therefore, distinguishable, and it is unnecessary for me to say whether or not I agree with the ruling in that case. In my judgment, whether we apply Section 28 or Section 10, when after the admission of a plaint a deficiency in court fees is discovered and the amount of the deficiency is made good in compliance with an order of the Court, the plaint becomes as valid as if it had been properly stamped when first presented. In this view it is unnecessary to discuss the various rulings cited at the hearing. In the present case the Court of first instance should, in my opinion, have allowed the plaintiff to supply the deficiency in fees, if there was any, and no question of limitation arose. I agree in the order proposed.

Burkitt, J.

53. I concur in the order proposed by the learned officiating Chief Justice and in the reasons by which it is supported.

Richards, J.

54. The facts and circumstances connected with this appeal have been fully stated by the learned acting Chief Justice in the able and exhaustive judgment he has just delivered, and it is quite unnecessary for me to refer to them. It seems to me that the whole difficulty in the case has arisen from the application by this Court of the ruling in the case of *Balkaran Rai v. Gobind Nath Tewari* to appeals. There a memorandum of appeal was presented to the High Court insufficiently stamped and a Full Bench held that, because limitation had expired before the deficiency was made good, the Court had no power to give time to the appellant to make good the deficiency, notwithstanding the provisions of the Court Fees Act, 1870. As pointed out by the Acting Chief Justice, the decision in *Balkaran Rai v. Gobind Nath Tewari* was contrary to the view of another Full Bench of the Court in *Chedi Lal v. Kirath Chand* (1889) I.L.R., 11 All., 628.

55. In *Balkaran Rai v. Gobind Nath Tewari* the Court had before it an insufficiently stamped memorandum of appeal, and it decided that, because the insufficiency of the stamp was not due to the mistake or inadvertence of the Court, there was no power under Section 28 of the Court Fees Act to allow the deficiency to be made good. In course of his judgment the learned Chief Justice points out that Sections 9 and 10 of the Court Fees Act, 1870, relate to suits and not to appeals, and from the remarks of the Chief Justice at page 147 of the report it would appear to have been his view that, whenever an insufficiently stamped appeal is admitted, the appeal must be deemed to have been admitted through the mistake or inadvertence of the Court or office. The manifest hardship of the decision in *Balkaran Rai v. Gobind Nath Tewari* led to the introduction of a new Section (582A) into the Code of Civil Procedure, and it is now expressly provided by that section that if a memorandum of appeal has been presented within the proper period of limitation, but is written on paper insufficiently stamped 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, the memorandum of appeal shall have the same effect and be as valid as if it had been properly stamped.

56. There can be no doubt that the introduction of Section 582A was due to the decision on *Balkaran Rai v. Gobind Nath Tewari*. It was apparently unnecessary to make a similar amendment of the law in respect of insufficiently stamped appeals,

because the judgment of the Court was expressly confined to memoranda of appeal Strange to say, notwithstanding that the Legislature had stepped in to remove the hardship of the decision in Balkaran Rai, this Court has in a number of cases extended the doctrine of the decision to cases of insufficiently stamped plaints and seems to have altogether overlooked the fact that the learned Chief Justice had expressly confined his judgment to memoranda of appeal. The result has been a most unsatisfactory state of affairs, which calls loudly for reconsideration. There may, of course, be cases where plaintiff's wilfully undervalue their claim, but the Legislature has made many provisions for the protection of the revenue. On the other hand a mistake in the court fee is often (as in the present case) a perfectly honest and excusable mistake. The question as to what is the proper stamp is frequently a very difficult one. Sometimes the question depends upon information which the plaintiff does not possess and cannot reasonably be expected to possess when he institutes his suit. Very often a difficult question of law is involved, capable of lengthy arguments on both sides. According to some of the recent rulings of this Court, if a plaintiff makes a mistake as to the stamp no matter how honest or how excusable the mistake may be, his suit must be dismissed unless he can show that the Court or office also made a mistake. On the other hand, the mistake of the plaintiff, no matter how grossly careless, is apparently cured if he can only show that the Court or office made a mistake also. Litigants and their advisers can never be certain how the Court will decide the question of 'mistake of the office.' It is a mixed question of law and fact and every Court more or less takes its own view of the matter.

57. A number of cases were cited during the argument as to what was a mistake of the Court and what was exclusively a mistake of the party. I am inclined to think that this present Bench would not have been unanimous in any one of them. I find it impossible to reconcile many of these cases: for example, compare the case of Chatarpal v. Jagram (1904) I.L.R., 27 All., 411 with the case of Hasibulnissa (1907) I.L.R., 29 All., 882. Second Appeal No. 923 of 1906, decided on 16th July last, was cited by Mr. Gokul Prasad. In that case the plaintiff omitted to count for the purpose of the stamp on his plaint a quarter of a pie supposed to be payable to Government for revenue. His suit was dismissed on the ground that he had made a mistake. More than one of the Judges of this Bench, from their remarks during

the argument, would seem to think that the plaintiff in that case made no mistake in omitting from his calculation the quarter pie, that the Munsarim made no mistake in admitting the plaint and that the fee paid was the correct fee. Second Appeal No. 923 of 1906 is not before us, and I do not now refer to it for the purpose of saying whether the fee paid was or was not correct. I refer to the case to illustrate how inconvenient and unsatisfactory it would be if the dismissal of a suit (where the plaint has been admitted) were to depend upon the view the Court took as to whether or not the alleged deficiency was due to the mistake or inadvertence of the plaintiff exclusively, to the mistake or inadvertence of the Court or office or to the mistake or inadvertence of both. The unsatisfactory state of the authorities on this question has led to an immense amount of unnecessary litigation, which, we hope, will end with our decision in this case. I entirely agree with the learned Acting Chief Justice in holding that in all cases in which after the plaint has been presented and admitted within limitation and the Court afterwards finds that the annual nett profits or the market value of the property mentioned in Section 9 of the Court Fees Act, 1870, have been wrongly estimated, the Court is bound to fix a date within which a plaintiff is to make good the deficiency, and if the deficiency is made good within that time, the suit cannot be dismissed on the ground that the deficiency was not made good within the time prescribed for instituting the suit. I concur in the proposed order.

Dillon, J.

58. I have had the advantage of perusing the elaborate and learned judgment of the Acting Chief Justice, and I agree with him in the conclusions at which he has arrived, and have nothing to add to the reasons which he has given for arriving at those conclusions.

59. The order of the Court is that, the Order of the lower appellate Court having been set aside upon the preliminary point, the appeal is remanded to that Court with directions to readmit it upon its file of pending appeals and to determine it in accordance with what has been set out in the judgments of this Court. Each side will bear its own costs in this Court.

