

Hamida Bibi Vs. Fatima Bibi

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Court : Allahabad

Decided On : Mar-18-1918

Reported in : AIR1918All180; 45Ind.Cas.991

Judge : Tudball and ;Abdul Raooof, JJ.

Appellant : Hamida Bibi

Respondent : Fatima Bibi

Judgement :

1. This is an appeal against an order of remand passed by the Court below. The question was one of limitation and application of Section 14 of the Limitation Act. The parties to this suit were co tenants in a holding. A suit was brought against them for rent and a decree was obtained (against them jointly) on the 6th of July 1910. On the 19th of August 1910 the plaintiff paid the decretal debt. On the 20th May 1913, some ninety days before the expiry of the period of limitation which is fixed by Article 99 of the First Schedule, she instituted a suit in the Small Cause Court. An objection was taken that the Court had no jurisdiction, and on the 27th of November 1913, the Small Cause Court held that it had no jurisdiction and directed the plaintiff to take back the plaint and file it in the proper Court. The plaintiff refused to take back the plaint. On the 19th of February 1914, that is nearly ninety days after the order of the Small Cause Court, she filed an application in the High Court for revision of the order. This application was dismissed by this Court on the 16th of March 1915. The plaintiff then apparently took a rest. She waited

until the 15th of June 1915, that if for full three months, and then applied to the Court for the return of the plaint. There was some delay and she received it on the 30th of June. On that same date she presented the plaint in the Court of the Munsif. The Court of first instance held that the-suit was barred by limitation. The lower Appellate Court has allowed to the plaintiff the period from the 20th of May 1913 to the 30th of June 1915 under Section 14 of the Limitation Act and has held that the suit is within time. Assuming without deciding that the period from the 27th of November 1913 to the 16th March 1915 may be allowed to the plaintiff under Section 14 of the Act, we fail to see that she has been prosecuting her case with due diligence in view of the fact that she waited for three months after the dismissal of her application for revision before she asked for the return of the plaint. We also cannot agree that the plaintiff was justified in refusing to take back her plaint from the Court of Small Causes because she wished to file an application in revision to this Court. If she had taken back her plaint as she could easily have done without any prejudice to the prosecution of her revision, it would have been in her hands directly the revision was dismissed and she could have at once filed it in the Court of the Munsif. On the contrary she preferred to wait for three months before she asked for the return of it. We do not think that she is entitled to any allowance for any period after the 16th March 1915. If the period up to that time be allowed to her, her suit should have been filed on or before the 16th of June 1915. It was not so filed and we, therefore, agree with the Court of first instance that the suit is barred by limitation. We allow the appeal, set aside the order of the lower Appellate Court and restore the decree of the Court of first instance with costs in all Courts.

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