

IN THE HIGH COURT OF JUDICATURE AT PATNA

Bajrangi Kumar Singh

vs.

Sheo Lal Sao & Anr

First Appeal No. 80 of 2022

03 December, 2024

(Hon'ble Mr. Justice Shailendra Singh)

Issue for Consideration

Whether the limitation period for filing a First Appeal under Section 96 of the Code of Civil Procedure should be computed from the date of the decree or from the date of the judgment when both are challenged?

Headnotes

- An appeal lies only in respect of a decree and not in respect of the judgment, though the judgment's copy is required to be filed with the memorandum of appeal. (Para 2)
- In the present matter, the decree was prepared on 19.07.2022 and the instant appeal was filed on 08.09.2022, so, it was filed within the prescribed limitation period of ninety days, as such, this appeal is within time. (Para 2)

Case Law Cited

Peerappa vs. Basamma & Ors. *AIR* 1981 Karnataka 163

List of Acts

Limitation Act, 1963; Code of Civil Procedure, 1908 (Section 96, Order XLI Rule 1)

List of Keywords

Limitation Period; First Appeal; Decree vs. Judgment; Article 116; Section 96 CPC; Order XLI CPC

Case Arising From

Appeal arising from a judgment and decree passed by the trial court exercising original jurisdiction.

Appearances for Parties

For the Appellant(s): Mr. Gaurav Govind, Advocate

For the Respondent(s): Mr.

Headnotes Prepared by Reporter: Amit Kumar Mallick, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.80 of 2022

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Bajrangi Kumar Singh	Appellant/s
	Versus		
Sheo Lal Sao & Anr	Respondent/s

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Appearance :
For the Appellant/s : Mr. Gaurav Govind, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

10 03-12-2024 Mr. Gaurav Govind, learned counsel appearing for

the appellant submits that the defect with regard to the limitation period pointed out by the office is completely wrong as in this appeal, the appellant has challenged both the judgment and decree and in the Limitation Act, there is no specific provision of limitation period with regard to an appeal against the judgment passed by a court while exercising its original jurisdiction, though, there is specific provision with regard to an appeal against the decree passed by such court and as per Article 116 of the Limitation Act, the limitation period for filing an appeal against the decree is ninety days and the same starts from the date of the decree and the appellant has filed this appeal within ninety days from the date of the decree which is under challenge. In support of the above submission, learned counsel has placed reliance upon the judgment of the **Karnataka High Court** passed in the case of **Peerappa vs. Basamma and Others** reported in **AIR 1981 Karnataka 163** in which it was



ruled that the limitation period under Article 116 of the Limitation Act for filing an appeal must be computed from the date of certified copy of the decree and not of the judgment and the relevant paragraphs upon which reliance has been placed are being reproduced as under:-

“16. As noticed earlier, though the learned Munsiff delivered his judgment on 21-4-1973, a decree in conformity with that judgment was actually drawn up by the office and was signed by him only on 29-5-1973.

17. On 23-4-1973 an application for a certified copy of the judgment and decree was made by the plaintiffs. On that application, the office called for additional folios on the same day and supplied a certified copy of the judgment on 14-5-1973. But, a certified copy of the decree was prepared and supplied to the plaintiffs on 29-5-1973 on the very day the decree was drawn up.

18. An appeal has to be filed against the decree and not against the judgment and, therefore, the plaintiffs lodged their appeal on 31-5-1973 before the Civil Judge annexing a certified copy of the judgment earlier obtained by them and the decree copy obtained by them on 29-5-1973.

19. Unfortunately the office has computed the period of limitation for the appeal on the basis of the certified copy of the judgment and not with reference to the certified copy of the decree produced by the plaintiffs. If the limitation for the appeal is computed with reference to the certified copy of the decree produced along with the appeal memo, as it should be in law, the appeal filed by the plaintiffs on 31-5-1973 is



well in time and the noting made by the office to the contrary is clearly wrong. But, that does not mean the learned Civil Judge should not have examined this aspect and dealt with the same, which would have avoided any contention by the defendant before this Court. In this view, the appeal filed by the plaintiffs on 31-5-1973 was well in time and there is no merit in the contention of Sri Gunjal and I reject the same.”

2. Heard the appellant’s counsel and perused the report of the stamp reporting section. A defect with regard to the limitation period has been pointed out by the stamp reporting section and it is mentioned in the report that in the instant matter, the limitation should be calculated from the date of the impugned judgment and not from the signing date of decree in view of the mandate given in Order XLI Rule 1 of the Code of Civil Procedure (in short ‘C.P.C.’) and in connection with regular civil appeal arising out of impugned judgment, limitation period will be effective from the date of pronouncement of the impugned judgment.

In view of the above mentioned report of stamp reporting section, this Court peruses the Section 96 and Order XLI of C.P.C. which deal with the First Appeal from original decrees, if we read them conjointly then it clearly appears that an appeal lies only in respect of a decree and not in respect of the



judgment, though the judgment's copy is required to be filed with the memorandum of appeal. As per C.P.C., the decree means a formal expression of an adjudication which conclusively determines the rights of the party with regard to a matter in controversy in the Suit and the judgment means the statement given by the judge on the grounds of a decree or order, so, it is clearly evident that the challenging of a decree by way of a civil appeal impliedly includes the judgment also passed by the trial court and due to this reason, only the decree has been made challengeable by way of an appeal which also gets support from the provisions of the Limitation Act as in the Limitation Act, only decree passed under the C.P.C. or orders which are appealable under the provisions of Order XLIII of C.P.C. have been made appealable. Though, it has become a practice to challenge the judgment and decree both but while computing the limitation period with regard to an appeal the decree must only be taken into consideration and as per the provisions of Limitation Act mentioned in Article 116, the limitation period for an appeal against a decree passed by a civil court having the original jurisdiction is ninety days to file the same in the High Court and the limitation period shall start from the date of the decree. In the present matter, the decree was



prepared on 19.07.2022 and the instant appeal was filed on 08.09.2022, so, it was filed within the prescribed limitation period of ninety days, as such, this appeal is within time and other defects have already been removed, so, put up this appeal for admission on its turn.

(Shailendra Singh, J)

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