

the provisions of section 466. But as this is a test case and inasmuch as the municipality itself told them at one time that they did not require a license under section 466, we think a nominal fine of Re. 1 (one rupee) only ought to be imposed upon them and we order accordingly.

A. S. M. A.

Rule absolute.

1920
 S. N.
 BANERJEE
 v.
 THE
 MANAGER,
 W. LEWIS
 & Co.

APPELLATE CIVIL.

Before Teunon and Beachcroft JJ.

SATISH CHANDRA CHAUDHURI

v.

GIRISH CHANDRA CHAKRAVARTY.*

1920
 March 1.

Limitation—Execution of decree—Application for execution of original decree—Commencement of period of limitation, whether date of original decree or of appellate decree—Execution against judgment-debtor not joined in the appeal.

Where an appeal has been preferred against a decree, the period of limitation for an application to execute the original decree runs from the date of the appellate decree, though the appeal was against one defendant and the application for execution was against the other.

Kristnama Chariar v. Mangammal (1) and *T. S. Ari Chetty v. Theerthamalai Chetty* (2) followed.

Lau v. Benarashi Proshad Chowdhury (3), *Lokenath Singh v. Guju Singh* (4), *Umesh Chandra Roy v. Akrur Chandra Sikdar* (5) and *Hur Proshaud Roy v. Enayet Hossein* (6) distinguished.

* Appeal from Order, No. 43 of 1919, against the order of G. N. Roy, District Judge of Hooghly, dated Nov. 14, 1918, affirming the order of Lalit Mohan Das, Subordinate Judge of that Court, dated March 18, 1918.

(1) (1902) I. L. R. 26 Mad. 91.

(4) (1915) 20 C. W. N. 178.

(2) (1916) 34 Ind. Cas. 791.

(5) (1918) I. L. R. 46 Calc. 25.

(3) (1914) 19 C. W. N. 287.

(6) (1878) 2 C. L. R. 471.

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Gopal Chunder Manna v. Gosain Das Kalay (1) and *Abdul Rahiman v. Maidin Saiba* (2) referred to.

SATI-H
CHANDRA
CHAUDHURI
v.
GIRISH
CHANDRA
CHAKRA-
VARTY.

Appeal from Appellate Order by Satish Chandra Chaudhuri, the judgment-debtor (defendant No. 2).

The plaintiff-respondent brought a suit upon a note of hand against two persons. It was decreed against defendant No. 2, but dismissed against the other defendant, on the 30th September, 1912. Defendant No. 2 did not prefer any appeal. There was an appeal by the plaintiff against defendant No. 1, in which defendant No. 2 was not made a party. The appeal was dismissed on the 23rd May, 1914. The first application for execution, which was dismissed for default, was made on the 19th May, 1917. The present application for execution was made on the 8th January, 1918. Defendant No. 2 pleaded limitation, on the ground that the period of limitation against him was to be counted from the 30th September, 1912, as he was no party to the appeal. Both the lower Courts overruled this contention and held that execution was not barred. He, thereupon, preferred the present appeal to the High Court.

Dr. Saratchandra Basak (with him *Babu Manmathanath Ganguli*), for the appellant. The decree passed against defendant No. 2 on the 30th September, 1912, was final and could not be affected by the appeal. The application for execution should have been made within three years of the aforesaid date: *Raghunath Pershad v. Abdul Hye* (3), *Muthu v. Chellappa* (4), *Law v. Benarashi Proshad Chowdhury* (5), *Hur Proshad Roy v. Enayet Hossein* (6). There were two decrees in the case.

(1) (1898) I. L. R. 25 Calc. 594.

(4) (1889) I. L. R. 12 Mad. 479.

(2) (1896) I. L. R. 22 Bom. 500.

(5) (1914) 19 C. W. N. 287.

(3) (1886) I. L. R. 14 Calc. 26.

(6) (1878) 2 C. L. R. 471.

Dr. Jadunath Kanjilal (with him *Babu Beerendra-chandra Das* and *Babu Nripendrachandra Das*), for the respondent. There was but one decree in the case, and that was the decree of the appellate Court, which confirmed that of the first Court. It was open to the first defendant to impeach the whole decree in the appeal. Suppose the appellate Court held that the hand-note was a forged one. It would dismiss the suit *in toto* in such a case. The decree could also be modified in appeal at the instance of defendant No. 1. See Civil Procedure Code, O. XLI, rr. 20, 33. In all such cases there would be really only one decree passed. In the cases relied on by the appellant, the decrees would show that separate decrees were passed for different amounts against different defendants. The decree passed against one defendant for a separate amount could not be affected by an appeal by another defendant. In some cases even this can be done: *Rup Jaun Bibee v. Abdul Kader Bhuyan* (1). The cases in point are: *Gopal Chunder Manna v. Gosain Das Kalay* (2), *Kristnama Chariar v. Mangammal* (3) which overrules the Madras case cited by my friend (4), *Mahomed Mehdi Bella v. Mohini Kanta Saha Chowdhry* (5), *Abdul Rahaman v. Maidin Saiba* (6), *Lokenath Singh v. Guju Singh* (7), *Umesh Chandra Roy v. Akrur Chandra Sikdar* (8) and *T. S. Ari Chetty v. Theerthamalai Chetty* (9).

Dr. Basak, in reply.

Cur. adv. vult.

TEUNON J. In this appeal the question is whether an application for execution is barred by limitation

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| (1) (1904) I. L. R. 31 Calc. 643. | (5) (1907) I. L. R. 34 Calc. 874. |
| (2) (1898) I. L. R. 25 Calc. 594. | (6) (1896) I. L. R. 22 Bom. 500. |
| (3) (1902) I. L. R. 26 Mad. 91. | (7) (1915) 20 C. W. N. 178. |
| (4) (1889) I. L. R. 12 Mad. 479. | (8) (1918) I. L. R. 46 Calc. 25. |
| (9) (1916) 34 Ind. Cas. 791. | |

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It appears that the respondent brought a suit on a hand-note against two persons, defendant No. 1, the father, and defendant No. 2, the son. His suit as against No. 1 was dismissed with costs, and as against defendant No. 2 was decreed with costs. This was on the 30th September, 1912.

Against the order dismissing the suit against defendant No. 1 plaintiff appealed. Defendant No. 2 was no party to that appeal and did not himself appeal against the decree that was made against him. The plaintiff's appeal against defendant No. 1 was dismissed on the 23rd May, 1914.

The plaintiff decree-holder then applied for execution of his decree against defendant No. 2 on the 19th of May, 1917. That application was dismissed on default of prosecution, without service of notice on defendant No. 2.

There followed the present application on the 8th of January, 1918. This application is within 3 years from the first application dated 19th of May, 1917, but the contention of the judgment-debtor defendant No. 2 is that the first application was itself barred by limitation.

The question in the appeal then is whether time runs from the date of the decree against defendant No. 2 made in the Court of first instance on the 30th of September, 1912 or from the 23rd of May, 1914, that is the date of the decree in the Appellate Court finally dismissing the plaintiff's claim against defendant No. 1.

The question is not free from difficulty. In support of his contention that time runs from the date of the decree of the first Court, the appellant before us, the judgment-debtor cites the cases *Law v. Benarashi Proshad* (1), *Lokenath Singh v. Guju Singh* (2), where *Law v. Benarashi Proshad* (1) is cited or referred to

(1) (1914) 19 C. W. N. 287.

(2) (1915) 20 C. W. N. 178

with approval; *Umesh Chandra Roy v. Akrur Chandra Sikdar* (1), and also *Hur Proshaud Roy v. Enayet Hossein* (2) and the Full Bench in *Gopal Chunder Manna v. Gosain Das Kalay* (3).

But the cases cited on behalf of the appellant can be distinguished from the present case, while the cases *Kristnama Chariar v. Mangammal* (4) and *T. S. Ari Chetty v. Theerthamalai Chetty* (5) support the respondent. So do certain observations to be found in the Full Bench case *Gopal Chunder Manna v. Gosain Das Kalay* (3). The case of *Abdul Rahiman v. Maidin Suiba* (6) has also been referred to, but that is the case of a mortgage.

It may further be observed that if the appeal preferred by the plaintiff had resulted differently, the decree against defendant No. 1 would have been modified, inasmuch as it would then have become a decree under which defendants 1 and 2 would have been jointly and severally liable.

In the result we dismiss this appeal with costs.

BEACHCROFT J. I agree.

Appeal dismissed

S. M.

(1) (1918) I. L. R. 46 Calc. 25.

(4) (1902) I. L. R. 26 Mad. 91.

(2) (1878) 2 C. L. R. 471.

(5) (1916) 34 Ind. Cas. 791.

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