

APPELLATE CIVIL.

Before Costello A. C. J. and Edgley J.

BASANTA KUMAR PAL

v.

BAZLUR RAHMAN NASKAR.*

1937

June 11, 17, 21.

*Decree—Execution—Appeal, Rejection of, Effect of—Limitation—Indian
Limitation Act (IX of 1908), Sch. I, Arts. 181, 182.*

Where the decree of the Court of first instance declared that the plaintiff would get *Lhas* possession by evicting the defendants, but gave the latter one month's time to vacate the land, and the appellate Court rejected the judgment-debtor's appeal for non-payment of deficit Court-fee,

held: (i) that the rejection of the judgment-debtor's appeal by the appellate Court, while having the effect of affirming the decree of the Court of first instance, as such, did not operate to revive the stay order added to that Court's decree or to give the defendants, judgment-debtors, any new concession as regards the time within which they were to vacate the land:

(ii) that, therefore, that part of the decree of the Court of first instance, which embodied the concession, must be deemed to have ceased to operate after the expiry of a month from the date of that Court's decree:

and (iii) that the period of limitation under Art. 182 of the schedule of the Limitation Act ran from the date of the appellate Court's decree and not after a month thereafter, and so the decree-holders were not enabled to benefit by the month's grace which had been allowed to the judgment-debtor by the Court of first instance.

Maharaja of Darbhanga v. Homeshwar Singh (1); *Noor Ali Chowdhuri v. Koni Meah* (2) and *Nann Narain Singh v. Roghwanath Sahai* (3) distinguished.

APPEAL FROM ORIGINAL ORDER by the decree-holders.

The facts of the case and the arguments in the appeal appear from the judgment.

Phani Bhooshan Chakrabarti for the appellants.

Hamidul Huq for the respondents.

EDGLEY J. In this case, an appeal has been preferred against the decision of Mr. B. M. Mitra,

*Appeal from Appellate Order, No. 578 of 1936, against the order of B. M. Mitra, Additional District Judge of 24-Parganás, dated June 2, 1936, reversing the order of Jateendra Kumar Basu, Second Additional Subordinate Judge of 24-Parganás, dated Mar. 11, 1936.

(1) (1920) 6 Pat. L. J. 132;
L. R. 48 I. A. 17.

(2) (1886) I. L. R. 13 Cal. 13.

(3) (1895) I. L. R. 22 Cal. 467.

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Additional District Judge of the 24-*Parganás*, in which he held that the decree-holders' application for the execution of a certain decree was time-barred. The decree-holders have appealed against this decision.

It appears that the appellants obtained their decree on February 19, 1930. The material portion of the decree of the first Court was in the following terms—

The plaintiff's title to the land mentioned in the schedule above is hereby declared and the plaintiff will get *khás* possession by evicting the defendants. The defendants are allowed one month's time to vacate the land. The plaintiff will take possession through the Court with the help of a pleader commissioner who will deliver them possession excluding the land on which the *masjid* stands.

It appears that, after the decree had been obtained by the decree-holders, on February 19, 1930, there was an appeal by the judgment-debtor; but, owing to the fact that the Court-fees were not paid, this appeal was rejected with costs on September 7, 1932.

The main point urged by the learned advocate for the appellants in this case is that the order rejecting the judgment-debtor's appeal on September 7, 1932, itself amounted to a decree and, this being the case, this decree embodied all the terms and conditions of the decree of the first Court dated February 19, 1930. In these circumstances, the learned advocate contends that the period of limitation should run not from September 7, 1932, but from October 7, 1932, so as to enable the decree-holders to benefit by the month's grace which had been allowed to the judgment-debtor by the first Court. He further contends that this case is governed not by Art. 182 of the Indian Limitation Act, but by Art. 181.

In support of his contention, the learned advocate has placed considerable reliance upon a decision of the Judicial Committee of the Privy Council in the case of *Maharaja of Darbhanga v. Homeshwar Singh* (1), which is to the effect that a decree which cannot

be executed cannot be time-barred and that, when the Limitation Act prescribed three years from the date of a decree or order as the period within which it must be enforced, this refers to an order or decree made in such a form as to render it capable in the circumstances of being enforced. In view, however, of the circumstances of the case now before us, it does not appear that the principle laid down by the Judicial Committee in the above-cited case can have any application, because we are of opinion that the decree of the appellate Court dated September 7, 1932, was actually executable on that date and, this being the case, there can be no question of taking this decree out of the provisions of Art. 182 of the Limitation Act and of applying the provisions of the preceding Article, *viz.*, Art. 181.

We arrive at this conclusion by reason of a consideration of the terms of the decree of the first Court. That decree states clearly that the plaintiffs will be entitled to get *khâs* possession of the suit lands by evicting the defendants. The further statement to the effect that the defendants are allowed one month's time to vacate the land allows a temporary concession to the defendants, which is entirely unconnected with the main provisions of the decree. This concession was in effect nothing more than a temporary stay order (in the nature of an addendum to the decree proper) which in the normal course must have expired within one month from the date on which it was made. It has not been contended that, when the judgment-debtor No. 22 filed his appeal, he obtained any further stay order: the mere filing of the appeal by him could not in itself operate to stay the execution of the original decree. It seems, therefore, only logical and reasonable to hold that the rejection of the judgment-debtors' appeal by the appellate Court, while having the effect of affirming the first Court's decree as such, did not operate to revive the stay order added to the decree or to give the defendants any new concession as

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regards the time within which they were to vacate the land. Therefore, that part of the first Court's decree, which embodied the concession, must be deemed to have ceased to operate after the expiry of a month from the date of that decree.

The learned advocate for the appellants sought to support his argument by referring to a decision of this Court in the case of *Noor Ali Chowdhuri v. Koni Meah* (1) in which it was held that the terms of the trial Court's decree must be presumed to be incorporated in the terms of the appellate decree. It appears, however, from the facts of that particular case that a decree for arrears of rent had been passed against the appellant, coupled with an order that, if the arrears so decreed were not paid within 15 days from the date of the decree, the appellant would be liable to ejection from his holding. An appeal preferred by the defendant was dismissed and, within 15 days from that date, he paid into Court the amount of the arrears of the decree. It was contended that this sum should have been paid by him within 15 days of the decree of the original Court, but this contention was overruled. It must, however, be observed from a consideration of that case that the defendant's liability or non-liability to ejection depended upon whether he paid the arrears due by him within a specified time and the time for paying these arrears was therefore an essential term of the decree. The facts of another case [*Nam Narain Singh v. Roghunath Sahai* (2)] are similar. The facts of those two cases are clearly distinguishable from those of the case now before us and, in our opinion, they are of no material assistance to the appellants. In view of what is stated above, the decision of the lower Court must be affirmed and this appeal is dismissed with costs.

COSTELLO A. C. J. I agree.

Appeal dismissed.

G. S.

(1) (1886) I. L. R. 13 Cal. 13.

(2) (1895) I. L. R. 22 Cal. 467.