APPELLATE CIVIL.

Before Edgley J.

1940

April 30
May 1.

RAM NARAYAN JAGAN NATH

v.

RADHA GOBINDA DEB NATH.*

Limitation—*Execution—Transfer of decree—Step in aid of execution—Indian Limitation Act (IX of 1908), Sch. I., Art. 182*(5).

The plaintiff obtained a decree in the Presidency Small Cause Court on July 23, 1926. An application for execution filed on July 16, 1929, was dismissed for default on September 30, 1929. Thereafter, the plaintiff obtained three various orders, under s. 31 of the Presidency Small Cause Courts Act, for the transfer of the decree to the Munsif's Court at Bhola for execution, on December 13, 1929, December 5, 1932, and December 4, 1935. The application for execution in the case was filed at Bhola on July 23, 1938.

Held that the application was not barred by limitation.

Sreenath Chakravarti v. *Priyanath Bandopadhyay* (1); *Rajbullubh Sahai* v. *Joy Kishen Pershad* (2); *Chundra Nath Gossami* v. *Gurroo Prosunno Ghose* (3) and *Ahad Bux Jamadar* v. *Kinkar Chandra Pal* (4) relied on.

Chutterput Singh v. *Sait Sumari Mull* (5) and *Amarkrishna Chaudhuri* v. *Jagatbandhu Biswas* (6) explained and distinguished.

APPEAL FROM APPELLATE ORDER by the plaintiff against the appellate order of the District Judge affirming an order of the Munsif, dismissing an application for execution.

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

Sudhir Kumar Acharjee for *Chandrasekhar Sen* for the appellants.

Hem Chandra Dhar and *Provash Chandra Basu* for the respondent.

*Appeal from Appellate Order, No. 157 of 1939, against the order of P. C. De, District Judge of Bakarganj, dated Feb. 28, 1939, affirming the order of Abinash Chandra Ghosh, Munsif of Bhola, dated Sep. 13, 1938.

(1) (1930) I. L. R. 58 Cal. 832.
(2) (1892) I. L. R. 20 Cal. 29.
(3) (1894) I. L. R. 22 Cal. 375.
(4) [1935] A. I. R. (Cal.) 640.
(5) (1916) I. L. R. 43 Cal. 903.
(6) (1931) I. L. R. 59 Cal. 760.

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EDGLEY J. This appeal is directed against the order of the learned District Judge of Bakarganj, dated February 28, 1939, in which he held that a certain application for execution was time-barred.

The decree-holder is the appellant in this case and he was seeking to execute a decree which he had obtained in the Presidency Small Cause Court on July 23, 1926. It appears that an application for the execution of this decree, which the decree-holder had filed on July 16, 1929, was dismissed for default on September 30, 1929. Thereafter, the record shows that the decree was sent on three occasions to the Court of the Munsif of Bhola for execution, *viz.*, on December 13, 1929, December 5, 1932, and December 4, 1935, but on each occasion the decree appears to have been returned unexecuted.

The application for execution with which we are now concerned was filed on July 23, 1938, and it is contended on behalf of the judgment-debtor that this application must be treated as time-barred as it was not filed within three years of the final order in the preceding execution case, which was passed on September 30, 1929. In this connection, it is argued that the subsequent proceedings under which the decree was transmitted to the Court of the Munsif of Bhola for execution cannot be regarded as steps in aid of execution. The last of the orders under which the decree appears to have been transmitted to Bhola for execution is dated December 4, 1935; and it is clear that, if this order can be regarded as an order in connection with an application to take some step in aid of execution within the meaning of Art. 182(5) of the Limitation Act, the application for execution which was filed on July 23, 1938, will not be time-barred.

In the first place, it is argued that these orders transferring the decree to the Bhola Court for execution should not be regarded as steps in aid of execution because, on the material dates, no execution

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case was actually pending. In support of this argument reliance is placed upon some observations of C. C. Ghose J. in the case of *Amarkrishna Chaudhuri* v. *Jagatbandhu Biswas* (1). In that case the learned Judge observed that—

> To take some step in aid of execution must mean some proceeding to obtain an order of the Court in furtherance of the execution of the decree..... It must be remembered that a step in aid of execution can only be taken in the course of an execution-proceeding which is pending or capable of being kept alive and there can be no step in aid of execution where the execution itself is already barred.

In the case with which we are now dealing it seems to be clear that the orders for the transfer of the decree to the Munsif's Court of Bhola, which were made on December 13, 1929, December 5, 1932, and December 4, 1935, must have been made in the ordinary course of business in pursuance of applications which were filed under s. 31 of the Presidency Small Cause Courts Act. Further, there is no doubt that, at the time when these orders were passed, the decree which it was sought to execute was still capable of being kept alive, although no application for execution may have been pending at the time. The provisions of Art. 182(5) of the Limitation Act show that, in order to save limitation in the case of the execution of a decree passed by a Court subordinate to this Court, an application for execution must be filed within three years of the final order made either in connection with a previous application for execution made in accordance with law, or within a similar period of the final order passed on an application to take some step in aid of execution. In my view, the law clearly contemplates that, if a decree is legally capable of being executed, a decree-holder may either apply for its execution by filing an application under O. XXI, r. 11 of the Code of Civil Procedure or apply for some step to be taken in furtherance of any execution proceedings which he may thereafter think it necessary to initiate, and, in the latter case, it is not necessary

(1) (1931) I. L. R. 59 Cal. 760, 770-1.

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that an application for execution should actually be pending at the time when he filed his application. For instance, the decree-holder would adopt a perfectly valid procedure if he applied in a suitable case to the Court which passed the decree for the transmission of the decree to another Court for execution and, after this transfer had been effected, applied to the transferee Court for the execution of the decree: *Sreenath Chakravarti* v. *Priyanath Bandopadhyay* (1).

The main question for decision, therefore, in connection with this appeal is whether an application to transfer a decree to another Court for execution should be regarded as a step in aid of execution. To my mind there can be no doubt that such an application must be regarded as an application to take some step in aid of execution and this is the view which was adopted by this Court in the cases of *Rajbullubh Sahai* v. *Joy Kishen Pershad* (2); *Chundra Nath Gossami* v. *Gurroo Prosunno Ghose* (3) and *Ahad Bux Jamadar* v. *Kinkar Chandra Pal* (4). In this connection, it was observed by Mukerji J., in the case of *Sreenath Chakravarti* v. *Priyanath Bandopadhyay* (*supra*) that—

> a mere application to have a decree transferred to another Court is not an application for execution [*Khetpal* v. *Tikam Singh* (5)], but we do not think it has ever been held that it is not a step in aid of execution: in fact it is the first aid that the Court which passed the decree is called upon to give to a decree-holder who stands in need of it when execution has to be had in a different Court.

In support of his contention that an order on an application for the transmission of a decree does not save limitation the learned advocate for the appellants places some reliance on the decision of this Court in the case of *Chutterput Singh* v. *Sait Sumari Mull* (6), which was approved by the Privy Council in the case of *Banku Behari Chatterji* v. *Naraindas Dutt* (7). The decision in *Chutterput Singh's* case, however,

(1) (1930) I. L. R. 58 Cal. 832.
(2) (1892) I. L. R. 20 Cal. 29.
(3) (1895) I. L. R. 22 Cal. 375.
(4) [1935] A. I. R. (Cal.) 640.
(5) (1912) I. L. R. 34 All. 396.
(6) (1916) I. L. R. 43 Cal. 903.
(7) (1927) I. L. R. 54 Cal. 500.

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depended on the question whether a certain order made by the Registrar, in pursuance of which a decree passed on the Original Side of this Court was transmitted to another Court for execution, constituted a revivor within the meaning of Art. 183 of the Limitation Act. It was held that to constitute a revivor of the decree there must be expressly or by implication a determination that the decree is still capable of execution, that such determination must be by a Court or by a person duly qualified to make it and that the Registrar was not clothed with the requisite authority for this purpose. The learned Chief Justice pointed out in his judgment that the conditions under which limitation may be saved in Arts. 182 and 183 of the Limitation Act are essentially different and Mukerji J. also observed that it was not necessary in that case to decide whether an application for transmission of a decree might not be deemed an application to take a step in aid of execution within the meaning of Art. 182(*5*) of the Limitation Act. In the case with which we are now dealing there is no question of the revival of a decree of a Court established by Royal Charter within the meaning of Art. 183 of the Limitation Act. It follows, therefore, that the decision in *Chutterput Singh's* case (*supra*) is of no assistance to the appellants.

Finally, it has been urged that a transmission order made by the Registrar of the Small Cause Court cannot be regarded as a judicial order on an application made in accordance with law. In this connection, I have already referred to the provisions of s. 31 of the Presidency Small Cause Court Act, from which it would appear that transmission orders in the Presidency Small Cause Court are only made on the application of the decree-holder. It must, therefore, be presumed in this case that such an application was duly made. In my judgment, the language of s. 35 of the Act is sufficiently wide to empower the Registrar to make any order in respect of execution matters "which a Judge of the Court

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"might make under this Act". I do not think, therefore, that there is any force in this argument which has been put forward on behalf of the respondent.

It follows, therefore, that the application for execution, which was filed on July 27, 1938, cannot be regarded as time-barred, as it was filed within three years of the last order passed on an application to take some step in aid of execution and thus fulfils the requirements of Art. 182(5) of the Limitation Act. The judgment of the lower appellate Court must, therefore, be set aside. This appeal is allowed with costs throughout and it is ordered that execution do proceed.

The hearing fee in this Court is assessed at two gold mohurs.

Leave to appeal under s. 15 of the Letters Patent is refused.

Appeal allowed.

S.M.