

the same action, and the amount claimed is less than Rs. 100, an appeal cannot, under s. 102, lie to this Court. The ejection of the ryot is not a necessary consequence of execution of the decree in such a suit. It depends entirely upon a contingency arising out of the neglect or recusancy of the ryot to make payment within the time specified. That being so, the jurisdiction of the Court cannot possibly be affected by the conduct of one of the parties in the course of execution of the decree. The suit must, we think, be dealt with as it was originally laid, and the proceedings in execution treated as a part of that suit, and subject to the same rule as regards jurisdiction throughout its various stages, as the suit itself.

In this view the preliminary objection must prevail, and the appeal be dismissed with costs.

*Appeal dismissed.*

*Before Mr. Justice Morris and Mr. Justice Prinsep.*

KRISTO COOMAR. NAG (DECREE-HOLDER) v. MAHABAT KHAN  
(JUDGMENT-DEBTOR).\*

1880  
Feb. 5.

*Execution-Proceedings—Limitation—Application to Proper Court for Execution—Aid of Execution—Act XV of 1877, sched. ii, art. 167.*

A, the judgment-debtor, opposed an application made by B the judgment-creditor for execution under a decree. This objection was overruled on the 17th January 1876. The appeal by A from this order (B being represented and opposing A's appeal at the hearing) was dismissed on the 2nd October 1877. On a second application for execution made by B on the 18th March 1879,—

*Held*, that such application was barred under art. 179, sched. ii, Act XV of 1877.

*Bipro Doss Gossain v. Chunder Seegur Bhattacharjee* (1) distinguished.

THE records in this case were sent for, and a rule issued on an application made by the decree-holder under s. 622 of the Code of Civil Procedure. The facts of this case sufficiently appear from the judgment of the Court.

\* Motion No. 1891 of 1879, in the matter of an appeal from an Order No. 11 of 1879, of the Judge of Pabna, dated the 11th of October 1879.

(1) B. L. R., Sup. Vol., 718; S. C., 7 W. R. 521.

1879  
FARBUTTY  
CHURN SINGH  
v.  
SHAIK MON-  
DARI.

1880  
 KRISHO  
 COOMAR NAG  
 v.  
 MAHABAT  
 KHAN.

Baboo *Ishen Chander Chuckerbutty* for the decree-holder.

Baboo *Nalit Chander Sein* for the judgment-debtor.

The judgment of the Court (MORRIS and PRINSEP, JJ.) was delivered by

MORRIS, J.—The facts are that an objection on the ground of limitation was taken by the judgment-debtor, which was dismissed by the first Court on the 17th January 1876. The judgment-debtor then appealed, and his appeal, which was opposed by the judgment-creditor, was dismissed on the 2nd October 1877. The judgment-creditor allowed the proceedings in execution to drop, and did not apply to revive them till the 18th March 1879. An objection was taken by the judgment-debtor that more than three years had elapsed since the next preceding application, and that, consequently, execution was barred. This objection was allowed by the first Court, and affirmed on appeal by the lower Appellate Court. A motion has since been made to this Court that this order is opposed to the provisions of art. 179, sched. ii, Act XV of 1877, which is the law which governs this case. This motion raises the question, whether the opposition raised by the judgment-creditor to the appeal of the judgment-debtor against the order of the first Court of the 17th January 1876 can be treated as “an application to the proper Court to take some step in aid of execution.” The judgment-creditor contends that it can, upon a fair interpretation of the words of the Act, such as was given by the Full Bench in the case of *Bipro Dass Gossain v. Chunder Seekur Bhattacharjee* (1), to the somewhat similar provisions of s. 20, Act XIV of 1850. We observe, however, that there is a great difference between the two cases, as well as in the wording of the two Acts on this point of limitation in execution. The action taken by a judgment-creditor to resist an appeal, which, if successful, would have the effect of setting his decree aside, may well be considered to be a proceeding taken for the purpose of keeping that decree or judgment in force; but it is difficult to see how such action constitutes an application to the proper Court for execution to take some steps

(1) B. L. R., Sup. Vol., 718; S. C., 7 W. R., 521

in aid of execution of the decree. In the first place, the appeal of the judgment-debtor does not operate as a stay of execution; for the law expressly provides (s. 545 of Act X of 1877), that execution of a decree shall not be stayed by reason only of an appeal having been preferred against the decree, and it is not asserted here that the Appellate Court ordered the execution to be stayed. In the second place, the application must be made to the proper Court for execution, that is, as defined in explanation 2 of art. 179, the Court whose duty it is (whether under s. 226 or 227 of the Code of Civil Procedure or otherwise) to execute the order. Obviously, therefore, the Appellate Court is not such a Court, and cannot be applied to for such a purpose.

Consequently, as it is admitted that the application for execution is out of time if the opposition of the judgment-creditor in the appeal is not to count as such, we affirm the order of lower Court, and discharge the rule with costs:

*Rule discharged.*

1880  
KRISHTO  
GOUMAL NAG  
v.  
MAHABAT  
KHAN.

*Before Mr. Justice Mitter and Mr. Justice Tottenham.*

NUND LALL BOSE AND ANOTHER (PLAINTIFFS) v. MIEER ABOO  
MAHOMED AND OTHERS (DEFENDANTS)\*

1879  
July 14.

*Execution-Proceedings—What matters may be determined on—Limitation—Res Judicata—Act VIII of 1869, s. 7—Act IX of 1871, sched. ii, arts. 60 and 118.*

A, a Hindu widow, granted, without legal necessity, a mokurari lease of certain mouzas, portion of her husband's estate, to B. During B's possession part of the lands comprised in the granted mouzas were taken up by Government, and the compensation-money was lodged in the Collectorate. A having afterwards died, the next heirs of A's husband, on the 7th October 1871, sued B to recover possession of the mouzas, but not being aware of the facts, did not in that suit claim the compensation-money lying in the Collectorate. While this suit was still pending, B, in March 1872, drew the compensation-money out of the Collectorate. The heirs, after obtaining a decree

\* Appeal from Appellate Decree, No. 1076 of 1878, against the decree of E. Grey, Esq., Judge of Gya, dated the 4th April 1878, affirming the decree of Baboo Bolai Chand, Subordinate Judge of that District, dated the 12th May 1876.