

Before Mr. Justice Cunningham and Mr. Justice Prinsep.

RADHA KISSORE BOSE AND ANOTHER (JUDGMENT-DEBTORS) v. AFTAB
CHUNDRA MAHATAB, MAHARAJA OF BURDWAN
(DECREE-HOLDER).*

1881
March 17.

*Execution of Decree—Partial Satisfaction under Arrangements made by Court
—Limitation—Subsequent Application for Execution.*

In execution of a decree, an order was made by the Court, directing the payment of the rents of certain property, which had been attached, as they became due from the mukuridar to the judgment-debtors, to be made to the decree-holder, to satisfy his decree; and afterwards the execution case was struck off the file. Subsequently, default having been made by the mukuridar in the payment of the rents of certain years, and the decree not having been fully satisfied, the decree-holder applied for an order directing the payment of the rents which were in arrear to be made by the mukuridar in accordance with the previous order. Notice having been directed to be served on the judgment-debtors, they came in, and pleaded limitation.

Held, that as the application was not strictly one for fresh execution, limitation could not apply, and that as the effect of the order in the execution-proceedings was virtually to appoint the decree-holder receiver under the provisions of s. 243 of Act VIII of 1869, and as the attachment was still in force, his proper course was to file a regular suit *qua* receiver against the mukuridar.

Hurronath Bhujjo v. Chunni Lall Ghose (1) distinguished.

THE facts of this case were as follows:—

The decree upon which execution had, in the first instance, been obtained, was that of the High Court on special appeal, dated the 29th June 1865. The decree-holder applied for execution in 1867, and attached a mouza, alleged to be the property of the judgment-debtors; but, in attempting to sell it, he was met with the objection that it was debutter property. This objection was sustained by the Principal Sudder Ameen, who,

Appeal from order, No. 388 of 1880, against the order of Baboo Brojendra Coomar Seal, Additional Judge of West Burdwan, dated the 6th September 1880.

(1) I. L. R., 4 Calc., 877.

1881
 RADHA
 KISSORE
 BOSE
 v.
 AFTAB
 CHUNDRAN
 MAHATAB.

on the 29th February 1868, ordered, that the property was to remain under attachment, and that the decree-holder was to continue to receive from the mukuraridar who held the mouza the annual rent payable by him to the judgment-debtors, until his decree was satisfied. After that, on the 14th March 1868, the execution case was struck off the file.

The decree-holder filed his present application for execution on the 14th April 1880, and stated therein that the amount still due to him, allowing for what had been paid, was Rs. 1,761-6-4; that the mukuraridar, in accordance with the order of the 29th February 1868, paid him the rents from 1275 to 1284, corresponding with the years 1868 to 1878, but had not paid him those accrued due since, and he asked therefore for an order that he might be compelled to pay him the rents for the years 1285 and 1286, corresponding with 1878 to 1880, towards the satisfaction of the decree.

The application was made before the Subordinate Judge, who directed notices to be served on the judgment-debtors, and they came in and pleaded limitation to fresh execution being issued. The Additional Judge, however, held, that the effect of the order of the 29th February 1868 was virtually to constitute the decree-holder receiver under the provisions of s. 243 of the Civil Procedure Code (Act VIII of 1859), and as the attachment was still in force, this application was not for execution, but merely to enforce compliance of that order against the mukuraridar; consequently limitation could not apply. Inasmuch, however, as the relief sought could not be granted in this summary proceeding, he disallowed the petition, but without costs, and referred the decree-holder to a regular suit for rent in his capacity of receiver against the mukuraridar.

From this order the judgment-debtors appealed.

Baboo Hem Chunder Bannerjee for the appellants.

Baboo Chunder Madhub Ghose and *Baboo Bussunt Coomar Bose* for the respondent.

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

1881

 RADHA
 KISSORE
 BOSE
 v.
 AFTAB
 CHUNDRANATHAN.

CUNNINGHAM, J.—In execution of the decree which forms the subject of this appeal, the Subordinate Judge, on the 29th February 1868, found, that the property under attachment being debutter could not be sold, but while exempting it from sale, he attached the rents payable to the judgment-debtors, making them applicable towards satisfaction of the decree. His order directed the mukuridar, the lessee of the judgment-debtors, to pay his rents to the decree-holder. The terms of this order may be somewhat informal, but, as we understand them, they amounted to an appointment of the decree-holder to be a receiver under s. 243, Act VIII of 1859, without the direct intervention of the Court, as is usual between the receiver and the decree-holder.

These collections were made up to the end of 1284 (April 1878), that is, for about ten years. For some reason or other the decree-holder then had some difficulty in realizing his rents, and he has been badly advised to apply to the Court for re-execution of his decree against the judgment-debtors, instead of acting under the authority of the order of February 1868, and he has asked for an order directing the mukuridar to pay the rents for 1285 and 1286.

The judgment-debtors have, accordingly, pleaded limitation in bar of further execution of this decree.

The Subordinate Judge has disallowed this objection, holding that the matter now before him was not in execution of the decree, but simply one between the decree-holder and the Court, the decree being under execution in the hands of the Court; and that, under such circumstances, there could be no limitation. We think that this view of the law is correct. The property is still under attachment, and the Court has itself undertaken the duty of satisfying the decree from the usufruct of the property by appointing a receiver. The decree-holder, *qua* decree-holder, is powerless. He is merely the recipient of money deposited at his credit in the Court. In the present instance, through the accident that the decree-holder has himself been appointed receiver, payments are made without the direct intervention

1881

RADHA
KISSORE
BOSEv.
APTAB
CHUNDRA
MAHATAB.

of the Court; but they are, nevertheless, from time to time, certified to the Court, since the decree-holder has been ordered to submit his accounts to the Court.

The proceedings in execution under the order of February 1868 have never yet terminated, and therefore no question of limitation arises.

The case of *Hurronqth Blunjo v. Channi Lall Ghose* (1), which was relied upon by the judgment-debtors' pleader, both before the Subordinate Judge and before this Court, is not in point. The Subordinate Judge has rightly distinguished this case, which was one in which, by private arrangement, the judgment-debtor agreed to satisfy the decree by monthly payments without any intervention of the Court. The proceedings in execution then terminated, so far as they were conducted through the Court, and when it was sought to revive them, it was found that they had become barred by limitation.

No doubt, the form which the present proceedings have taken at the instance of the decree-holder is, as I have already pointed out, irregular, for there was no necessity to apply for execution of the decree or to bring the judgment-debtors before the Court. The judgment-debtors would, therefore, ordinarily be entitled to their costs, but they have chosen to plead limitation both in the lower Court and before us in appeal, and as that plea has been rejected we cannot give them any costs.

We, therefore, dismiss this appeal, but without costs.

Appeal dismissed.

(1) L. L. R., 4 Cal., 877.