

Before Mr. Justice Wilson and Mr. Justice Field.

DENONATH CHUCKERBUTTY (JUDGMENT-DEBTOR) v. LALLIT
COOMAR GANGOPADHYA (DECREE-HOLDER).*

1882
August 22.

Limitation (Act XV of 1877,) Sch. II, Art. 179, cl. 4—Application for execution of decree by benamidar.

An application for execution of a decree by a mere benamidar is not an application *in accordance with law* within the meaning of Art. 179, cl. 4 of Sch. II of the Limitation Act (XV of 1877), such as to afford a fresh starting point for limitation.

THE application out of which this appeal arose was made on the 9th December 1880 by Lallit Coomar Gangopadhya, who held a decree against Koilash Nath Dutt Rai, and was for execution of a decree, dated the 7th June 1877, which Koilash Nath Dutt Rai had obtained against Denonath Chuckerbutty.

The only previous application for execution of the latter decree had been made on the 1st of June 1880 by one Nobin Chunder Bhattacharjya, who alleged that he had purchased the decree from Koilash Nath Dutt Rai. Lallit Coomar Gangopadhya had opposed that application on the ground that he had attached the decree, and that Nobin Chunder Bhattacharjya was merely a benamidar for Koilash Nath Dutt Rai; and on the 4th of December 1880 Nobin Chunder Bhattacharjya withdrew his application.

In the present application it was found as a fact that Nobin Chunder Bhattacharjya had applied for execution merely as benamidar for Koilash Nath Dutt Rai.

The first Court held that the present application was barred by limitation, and accordingly rejected it.

The lower Appellate Court reversed this order, and allowed the application, citing *Syud Nadir Hossein v. Baboo Pearoo Thovildarinee* (1), and *Purna Chandra Roy v. Abhaya Chandra Roy* (2),

* Appeal from Appellate Order No. 107 of 1882, against the order of T. M. Kinkwood, Esq., Judge of Mymensingh, dated the 26th February 1882, reversing the order of Baboo Nobin Chunder Ghose, Subordinate Judge of that district, dated the 6th August 1881.

(1) 14 B. L. R., 425: 19 W. R., 255.

(2) 4 B. L. R., Ap., 40.

1882

DENONATH
CHUCKER-
BUTTY
v.
LALLIT
COOMAR
GANGO-
PADHYA.

as authority for its decision, and holding that *Abdul Kureem v. Chukhun* (3) did not apply in the present case.

Denonath Chuckerbutty, the judgment-debtor, appealed to the High Court.

Baboo *Grija Sunkur Mozoomdar* for the appellant.

Baboo *Jogesh Chunder Roy* for the respondent.

The judgment of the Court (WILSON and FIELD, J.J.) was delivered by

WILSON J.—This is an appeal against an order allowing an application for execution of a decree. The decree bears date the 7th of June 1877, and was in favour of Koilash Nath Dutt Rai. On the 1st of June 1880 one Nobin Chunder Bhattacharjya applied for execution claiming it as assignee of the decree. It is found as a fact that he was a mere benamidar for the original decree-holder. The present application, which is made by a person who has attached the decree, was made on the 9th of December 1880. The question raised is, whether this application is barred by limitation. If the period of limitation runs from the date of the decree there is no doubt that the application is too late. If the period runs from the former application for execution there is no doubt that it is in time. We have, therefore, to say whether an application for execution by a mere benamidar is an application “in accordance with law” within the meaning of Art. 179, cl. 4 of Sch. II, of the Limitation Act. It has already been held in *Abdul Kureem v. Chukhun* (3) that where a decree is held in the name of a benamidar the proper person to apply for execution is the real decree-holder, and in that view we fully concur. It follows that an application by the benamidar is not an application in accordance with law.

The appeal will, therefore, be allowed, and the order for execution set aside with costs in all Courts.

Appeal allowed.