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WILAYAT-
UN-NISSA
V.
NAJIB-UN-
NISSA.

Where a person has executed a bond consenting at the time of registration that it should be registered in such a manner that the bond-holder may at once obtain a decree, it is intelligible that the law should declare the decree final unless the alleged executant of the bond could show cause why the decree should be stayed. But the reasons which induced the Legislature to declare such decrees and orders final do not extend to orders passed under the provisions of the Civil Procedure Code for the execution of such decrees. Construing the terms of s. 55 strictly, they do not deprive the parties to the decree of such rights of appeal as the Code of Civil Procedure declares to attach to orders in execution passed under the provisions of that Code.

It is a more difficult question whether the execution of the decrees obtained under the Registration Act, 1866, is governed by cl. 166 or cl. 167, sch. ii of the Limitation Act, 1871. They are not mere decisions of a Civil Court, but on the other hand they are not decrees or orders passed in a regular suit. They are decrees passed without the formalities prescribed for regular suits. They resemble decrees passed on awards filed under the provisions of the Procedure Code. It has I believe never been doubted that the execution of decrees passed on awards is governed by cl. 167 and not cl. 166, and I consider that cl. 167 is equally applicable to decrees obtained under the special provisions of the Registration Act of 1866.

SPANKIE, J.—I concur in the views expressed by Mr. Justice Turner on the point expressly referred.

FULL BENCH.

Before Sir Robert Stuart, Kt., Chief Justice. Mr. Justice Pearson, Mr. Justice Turner, and Mr. Justice Spankie.

JAI SHANKAR AND ANOTHER (DECREE-HOLDERS) v. TETLEY (JUDGMENT-DEBTOR).*

Execution of Decree obtained on Bond specially Registered—Act XX of 1866 (Registration Act), ss. 52, 53—Limitation—Act IX of 1871 (Limitation Act), sch. ii. arts. 166, 167.

Held that art. 167, and not art. 166, sch. ii of Act IX of 1871, applies to an application for the execution of a decree made under the provisions of s 53 of Act

* Miscellaneous Regular Appeal, No 34 of 1877, from an order of Maulvi Sami-ul-la Khan, Subordinate Judge of Aligarh, dated the 16th April, 1877.

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XX of 1866 upon a bond specially registered under the provisions of s. 52 of that Act.

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THIS was an application for the execution of a decree which had been obtained under the provisions of s. 53 of Act XX of 1866 upon a bond specially registered under the provisions of s. 52 of that Act. The judgment-debtor objected that the application was governed by art. 166, sch. ii of Act IX of 1871, and was barred by limitation, and also that, even if it were governed by art. 167 of the same schedule, it was barred by limitation. The Court of first instance held that the application was barred by limitation under art. 166 and also under art. 167, sch. ii of Act IX of 1871.

The decree-holders appealed to the High Court, contending that art. 166, sch. ii of Act IX of 1871, was not applicable; that even if it were the application was within time; and that art. 167 was applicable, and the application was within the time prescribed by the same.

The Court (STUART, C. J., and TURNER, J.) referred to the Full Bench the question whether the application was governed by art. 166, or art. 167, sch. ii of Act IX of 1871.

Mr. *Conlan*, Pandit *Ajudhia Nath*, and Munshi *Sukh Ram*, for the appellants.

Mr. *L. Dillon* and Mir *Akbar Husain*, for the respondent.

The following judgments were delivered by the Full Bench:

STUART, C. J.—I agree with the other members of the Court that the appeal in this case must be allowed. Art. 167, sch. ii of Act IX of 1871, clearly applies and governs the case, and the application therefore is not barred.

PEARSON, J.—In my opinion the appeal lies. The law of limitation applicable to the case appears to be art. 167, sch. ii of Act IX of 1871. Art. 166 is not applicable, for execution is not sought of a decision but of a decree. The application is clearly within three years of preceding applications to enforce or keep in force the decree, and is therefore not barred.

TURNER, J.—It is admitted at the bar that the application is not barred by limitation, if the application is governed by art. 167, sch. ii of Act IX of 1871. There were clearly applications sufficient

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to keep the decree alive made within three years before the present application was presented. That the application is governed by the provisions of that article I have held in Miscellaneous Special Appeal No. 10 of 1877 (1). The order of the Court below must be reversed, and the proceedings returned to that Court that the application may be disposed of on the merits. The costs of this appeal should abide and follow the result.

SPANKIE, J.—I concur in the view expressed by Mr. Justice Turner.

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February 4.

APPELLATE CIVIL.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

ALI SHAH (PLAINIFF) v. HUSAIN BAKHSH AND ANOTHER (DEFENDANTS).*

Sale in Execution of Decree—Auction-purchaser—Lis pendens—Res judicata—Act VIII of 1859 (Civil Procedure Code), s. 2

A, the auction-purchaser of certain immoveable property at a sale in execution of a decree, purchased with notice that a suit by *H* and *M* against the judgment-debtor and the decree-holder for a share in such property was pending, but did not intervene in such suit. Before the sale to *A* was made absolute, *H* and *M* obtained a decree in the suit for a moiety of the share claimed by them. *A* took no steps to get such decree set aside, but sued them to establish his right to such moiety in virtue of his auction-purchase. It appeared that the Court which passed the decree in favour of *H* and *M* did so without jurisdiction. Held that, inasmuch as the suit in which such decree was made was tried and determined by a Court having no jurisdiction, it could not be held that *A* was bound to intervene in it and dispute the claim preferred therein, or that he was bound by such decree, and that it could not be said that *A* was bound to take steps to get such decree set aside by means of appeal, or that because he had omitted to do so, it had become binding on him, and his suit was precluded.

Quære, whether the doctrine of *lis pendens* applies in the case of a purchase in execution of decree.

THIS was a suit for possession of a one biswa ten biswansis share in a certain village. This share was included in an eight biswas share which belonged to two brothers, Khoda Bakhsh and Ghulam Husain. Khoda Bakhsh pre-deceased Ghulam Husain, leaving a widow, Rajbibi, and a son, Ali Bakhsh. Before his death Khoda

* Second Appeal, No. 1183 of 1877, from a decree of S. Melville, Esq., Judge of Meerut, dated the 19th June, 1877, affirming a decree of Babu Kashi Nath Biswas, Subordinate Judge of Meerut, dated the 7th September, 1876.

(1) See *Wilayat-un-nissa v. Najib-un-nissa*, ante, p. 583.