

1877

TAUFIK-UN-
NISSA
v.
GHULAM
KAMBAR.

judgment proceeded as follows :) We hold that neither by law or custom is the plaintiff debarred from obtaining prompt dower, and we consider Rs 17,000, or one-third of the total dower, a reasonable sum to award. We reverse the decree of the lower Court and decree accordingly with all costs.

Appeal allowed.

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APPELLATE CIVIL.

Before Sir Robert Stuart, Kt., Chief-Justice, and Mr. Justice Oldfield.

IMAM ALI AND OTHERS (DECREE-HOLDERS) v. DASAUNDHI RAM
(JUDGMENT-DEBTOR).*

Execution of Decree—Special Appeal—“Final Decree of Appellate Court”—Limitation—Act IX of 1871 (Indian Limitation Act), sch. ii, art. 167.

The Munsif gave the plaintiffs in a suit for possession of land and for mesne profits a decree for possession but dismissed the claim for mesne profits. An appeal was preferred to the Judge, who affirmed the decree for possession and remanded the case to the Munsif, under s. 351 of Act VIII of 1859, to determine the mesne profits due to the plaintiffs. The Munsif gave the plaintiffs a decree for certain mesne profits. Subsequently a special appeal was preferred to the High Court against the Judge's decree. While this was pending an appeal was preferred to the Judge against the decree of the Munsif for mesne profits, and on the 7th June, 1873, the plaintiff again obtained a decree for mesne profits. Finally, on the 6th March, 1874, the High Court modified the Judge's decree for possession but did not interfere with the order of remand. *Held*, on the plaintiffs applying for execution of the Judge's decree, dated the 7th June, 1873, that the limitation for the execution of such decree ran not from the date of such decree but from the date of the High Court's decree, which was “the final decree of the Appellate Court,” and the only “final decree,” within the meaning of art. 167, sch. ii of Act IX of 1871.

THIS was an application for the execution of a decree of a District Court, dated the 7th June, 1873. The facts of the case are sufficiently stated in the judgment of the High Court to which the decree-holders appealed against the order of the Judge, affirming the order of the Munsif, which decided that execution of the decree was barred by limitation.

The decree-holders appealed to the High Court on the ground that limitation began to run from the date of the decree of the High

* Miscellaneous Special Appeal, No. 63 of 1877, from an order of H. M. Chase, Esq., Judge of Saharanpur, dated the 18th May, 1877, affirming an order of Maulvi, Muhammad Inaded Ali, Munsif of Saharanpur, dated the 21st March, 1877.

Court dated the 6th March, 1874, and not from the date of the decree of which execution was sought.

Babu *Barodha Prasad*, for the appellants.

Munshi *Hanuman Prasad*, for the respondent.

The High Court delivered the following

JUDGMENT.—The question before us is whether the appellant's decree is incapable of execution by limitation. He sued in the Munsif's Court for possession of certain land and to recover damages. The Munsif decreed possession but dismissed the claim for damages. An appeal was preferred to the Judge, who (28th February, 1873,) affirmed the decree giving possession and remanded the case, under s. 351 of Act VIII of 1859, for adjudication as to the amount of damages due. An appeal was preferred from the Judge's decision to the High Court on the 23rd May, 1873, and was pending till 6th March, 1874, when the decision as to possession was modified and the Court did not interfere with the order of remand made by the Judge. In the meantime the Munsif on the 25th April, 1873, decreed damages, and an appeal was preferred to the Judge who decided it on the 7th June, 1873. It will be seen that the Judge's order is prior to the date of the High Court's decision in the appeal before them. Appellant now takes out execution of the Judge's decree of the 7th June, 1873. If the three years' limitation is to run from the former date, the application is barred, and this is the view taken by the lower Courts. But this view is erroneous. Where there has been an appeal, the limitation will run from the date of the final decree of the Appellate Court. We hold this to be the decree of the High Court and not that of the Judge, the 7th June, 1873; the former was passed after the Judge's decree of the 7th June, 1873, and must be held to be the final decree of the Appellate Court and to have finally determined the entire claim. The lower Courts seem to consider that there may be several final decrees of an Appellate Court in one and the same case, giving separate periods of limitation for separate portions of a claim in one and the same suit, and they refer to the High Court's decree as final on the point of possession and so affording a period of limitation for that portion, and the Judge's decree as final on the point of damages and

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affording another period of limitation for that portion of the claim, but this view is erroneous, both decrees cannot be final within the meaning of the limitation law. We reverse the order of the lower Court and remand the case for execution in due course. Costs to abide the result.

Cause remanded.

APPELLATE CIVIL.

Before Mr. Justice Pearson and Mr. Justice Turner.

LACHMAN BIBI AND ANOTHER (DECREE-HOLDERS) v. PATNI RAM AND ANOTHER
(JUDGMENT-DEBTORS).*

Decree made in favour of a Firm in name of Agent—Applications for Execution made by Agent other than Agent named in the Decree—Effect of such Applications to keep the Decree in force—Limitation—Act IX of 1871 (Indian Limitation Act), sch. ii, art. 167.

A decree was passed in favour of a firm in the name of an agent of the firm. The second and subsequent applications for execution were made by an agent of the firm other than the agent named in the decree. Certain persons, alleging that they were the proprietors of the firm, applied for execution of the decree. The application was refused on the ground that the proceedings in execution taken by the last-mentioned agent were invalid and execution of the decree was therefore barred by limitation. *Held* that such proceedings, however irregular, were not invalid.

THIS was an application for execution of a money-decree dated the 10th May, 1870. This decree was passed *ex parte* in the name of Kishn Lal, described as the agent of the firm of Megh Raj Herbilas. On the date it was passed application for execution was made by Kishn Lal. A second application was made on the 8th December, 1871, by one Mohan Lal, who had succeeded Kishn Lal as agent of the firm of Megh Raj Herbilas. A third and fourth was made by the same person on the 30th May, 1872, and the 13th April, 1875, respectively. The present application was made on the 15th February, 1877, by Lachman Bibi and Katu Bibi alleging themselves to be the proprietors of the firm of Megh Raj and Herbilas the decree-holders. The judgment-debtors objected to the execution of the decree on the ground, among other grounds, that the former applications for execution made by Mohan

*Miscellaneous Special Appeal, No. 66 of 1877, from an order of J. W. Power, Esq., Judge of Gházipur, dated the 4th August, 1877, reversing an order of Maulvi Zain-ul-Abdin, Subordinate Judge of Gházipur, dated the 3rd July, 1877.

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