

1877

MUSAMMAT  
BHAWANI  
KUAR,  
v.  
GULAB RAI.

We reverse the order of the Judge and remand the case to him for decision on the merits, he has erred in considering the sale in this case to be a sale of moveable property.

### APPELLATE CIVIL.

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

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January 31.

STOWELL, MANAGER, UNCOVENANTED SERVICE BANK, LIMITED, (DECREE-HOLDER)  
v. BILLINGS. (JUDGMENT-DEBTOR.)\*

*Act VIII of 1859, ss. 285—348—Act XIV of 1859—Act IX of 1871—Compromise under decree—Execution—Limitation—Payments under Compromise—Proceedings under barred decree.*

Where a decree-holder entered into a compromise with the judgment-debtor, agreeing to accept payment by instalments, which was ratified by the Court executing the decree, the case being struck off, the execution file on the basis of the compromise, and more than three years after the date of the Court's order sanctioning the compromise subsequent proceedings were taken by the decree-holder to enforce the original decree. *Held* that such subsequent proceedings when execution of the original decree had been already barred by limitation could not avail to keep the decree alive.

THE execution proceedings in this case arose out of a decree passed by the High Court on the 5th January, 1869, against the judgment-debtor for Rs. 7,879-14-5, bearing interest at six per cent. per annum.

The Uncovenanted Service Bank, decree-holder, entered into a private arrangement with the judgment-debtor to accept payment in monthly instalments bearing interest at twelve per cent. per annum. A petition was presented by the judgment-debtor on the 23rd August, 1869, to the Court of the District Judge, executing the decree. This petition notified the terms of the compromise, which acknowledged the decree-holder's right to revert to execution of the original decree with interest at the additional rate in the event of failure of any two consecutive monthly instalments. The Court, on the 7th September, 1869, ratified the said compromise and struck off the case from the execution file.

On the 15th February, 1873, the decree-holder applied for a certificate under s. 285, Act VIII of 1859, to enable him to execute the decree of 5th January, 1869, out of the Court's jurisdiction where the judgment-debtor resided. After notice to the judgment-

\* Miscellaneous Regular Appeal, No. 48 of 1876, against an order of H. G. Keene, Esq., Judge of Agra, dated the 22nd April, 1876.

debtor, the certificate issued on the 25th April, 1873. No proceedings were taken by Government under the certificate as the judgment-debtor resumed payment of instalments to the decree-holder direct. On the 15th January, 1876, the decree-holder applied to the District Court at Agra, which had issued the certificate in April, 1873, to execute the decree of 5th January, 1869. The judgment-debtor pleaded that execution was barred by limitation, and that the decree had been satisfied.

The Judge overruled the plea of limitation holding that under Act XIV of 1859, which he considered to be in force in 1873, the payment of instalments under a duly sanctioned agreement was a proceeding to enforce or keep in force a decree. The Judge cited a case (1) in support of his view and decided that limitation must be reckoned from date of the proceedings in 1873. On the other hand the Judge ruled that the compromise of 1869 could not alter or modify the terms of the High Court decree of 5th January, 1869, and dismissed the decree-holder's claim to interest thereon at twelve per cent. The decree-holder in appeal to the High Court among other objections to the mode in which the appellant's accounts had been prepared, pleaded that in decreeing simple interest at six per cent., and disregarding the arrangement of 1869 accepted by the judgment-debtor, and ratified by the Court, the Judge had acted against law and equity. The judgment-debtor, respondent, filed objections under s. 348, Act VIII of 1859, to the effect that execution of the decree was barred and that the appellant's accounts had been erroneously prepared.

Mr. Conlan, Mr. Raikes, Mr. Mahmud, and the *Junior Government Pleader* (Babu Dwarka Nath Banerji), and Munshi Hanuman Parshad for the appellant.

Mr. Ross and Pandit Bishambhar Nath for the respondent.

The judgment of the High Court after reciting the above facts continued as follows :—

The Judge holds that as Act XIV of 1859 was in force in March, 1873, when the notice to show cause was issued, there was "a proceeding to enforce or keep in force a decree," and therefore the present application made within three years from that date is within time.

(1) I. L. R., I. Bom., p. 63.

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But respondent's counsel contends that in 1873, when the above proceedings took place, the decree which appears to be dated 5th January, 1869, was dead, and that it was even so if the time be reckoned from the 7th September, 1869, when the arrangement referred to was made. He also contends that no arrangement made between the parties though recognised by the Court can enlarge the period allowed by law for the execution of decrees, nor can the terms of a decree be varied by the Court executing the decree, and in support of this contention he cites the Full Bench ruling of the Calcutta Court dated 4th September, 1869, (1) and a decision of this Court to the same effect (2). This Court referred to the ruling of the Calcutta High Court already referred to and held that the receipts of instalments by a decree-holder out of Court in pursuance of a compromise made between him and his judgment-debtor is not a proceeding to enforce or keep in force a decree, and the Court added that the condition in a compromise that on default being made in a certain number of instalments, the decree should be executed in full, cannot prevent limitation from running. This Full Bench decision of the Calcutta High Court held that such a compromise even though recognised by the Court executing the decree could not enlarge the limitation and therefore the ruling in that case applies more strictly to the case before us than the decision of this Court. But the principle is the same in both cases.

When the two instalments fell due in May and June, 1872, more than three years had expired since the date of the decree and the fact that there were proceedings in 1873, which would make the application of 1876 within time, is we think of no service to the decree-holder. We must look behind the application of 1873 when pressed upon the point of limitation, and as more than three years had elapsed between the 7th September, 1869, and 15th February, 1873, the claim to execute the decree then and now is clearly barred.

We are therefore compelled to dismiss the appeal and reverse the order of the Judge, and we must do so with costs as the objections now urged by respondent were taken below.

(1) 6 B. L. R., F. B. Rulings, p. 101. (2) H. C. R., N.-W. P., 1873, p. 100.  
 Krishna Kamal Singh, D. H. v. Hira Abas Imam, Appellant,  
 Sudan and others.