

The judgment of the Court was as follows :—

The cause of action in this suit accrued to the plaintiff in August, 1861, when his father died ; and the period during which the suit might legally be brought is 12 years. If the suit can be held to have been instituted on the 21st February 1873, the date on which the application for permission to sue *in formâ pauperis* was first presented to the Subordinate Judge of Meerut, it is clearly within time ; and there can be no doubt that, had the application of the 21st February, 1873, been granted, the suit would rightly be deemed to have been instituted on that date. But that application never was granted, and was indeed virtually withdrawn on the 27th November, 1874, by the plaintiff's offer to pay the amount of the fee chargeable on the plaint under the Court Fees Act before the inquiry into his pauperism had been concluded ; and his application was not numbered and registered and assumed to be the plaint in the suit under the provisions of s. 308, Act VIII of 1859, in consequence of proof of his pauperism, but in consequence of the payment by him of the proper fees. But there is no provision in the law which allows the application presented under s. 299 of the Code to be deemed the plaint in the suit when such application has been in effect revoked and superseded by the payment of the fees chargeable under the Court Fees Act. In such a case we conceive that the date of the presentation of the plaint and institution of the suit must be taken to be the date of the payment of the fees ; and we are therefore unable to rule that the lower Court has erred in declaring the present suit to have been instituted after the lapse of the period allowed by the law. We have no alternative but to dismiss the appeal with costs.

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 SKINNER
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 APPELLATE CIVIL.

 1876
May 29.

(*Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Pearson.*)

RAM AUTAR AND OTHERS (JUDGMENT-DEBTORS) v. AJUDHIA SINGH AND OTHERS (DECREE-HOLDERS).*

Execution of Decree—Act IX of 1871, sch. ii, 167—Limitation.

An application for the partial execution of a joint decree by one of the decree-

* Miscellaneous Regular Appeal, No. 50 of 1875, from an order of the Subordinate Judge of Gorakhpur, dated the 28th July, 1875.

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holders is not an application according to law (1) and consequently has not the effect of keeping the decree in force (2).

RAM AUTAR
v.
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Where a decree of the Sudder Court awarded costs in the lower Court to certain defendants, separately, and to eight sets of defendants, collectively, and costs in the Sudder Court to three sets, and the only applications which were made for execution of the decree within the period of limitation were made by one of the defendants to recover his costs in the lower Court and a fractional share of the costs in the Sudder Court awarded to his set of defendants, a subsequent application by him and the other defendants for execution of the decree was held to be barred by limitation.

The judgment-debtors in this case had sued 126 defendants to recover the value of certain property. The Court of first instance, on the 30th May, 1862, gave them a decree against

(1) See also *Balkishoon v. Mahomed Tazam*, H. C. R., N-W. P., 1872, p. 90; *Rai Damodar Dass v. Bholanath*, H. C. R., N-W. P., 1870, p. 413; *Prannath Mitter v. Mothooranath Chuckerbutty*, 6 W. R., Mis. 64; *Maharanees Indurjeet Koomwar v. Mazum Ali Khan*, 6 W. R., Mis. 76; *Thakoor Dass Singh v. Luchmeegut Doogur*, 7 W. R. 10; *Judoonath Roy v. Ram Buksh Chaitangee*, 7 W. R. 535; *Purna Chandra Mookerjee v. Sarada Charan Roy*, 3 B. L. R., App. 21; S. C., 11 W. R. 241; *Huro Sunhur Sandyal v. Taruck Chunder Bhattacharjee*, 11 W. R. 488; *Indro Coomar Dass v. Mohinee Mohun Roy*, 15 W. R. 159; *Nubo Kishore v. Anund Mohun*, 17 W. R. 19; *Faez Buksh Chowdhry v. Sadut Ali Khan*, 23 W. R. 282; and *Nund Coomar Fotehdar v. Bunsu Gopal Sahoy*, 23 W. R. 342.

(2) The decisions under s. 20 of Act XIV of 1859 (corresponding to Act IX of 1871, sch. ii, 167) may be summarised as follows:—

(i) It has been held in *Chooa Sahoy v. Tripoora Dutt* (13 W. R. 244) that, when a decree is passed severally in favour of a number of persons distinguishing a certain portion of the aggregate amount decreed as payable to each and one of those persons takes proceedings in execution for the recovery of his own portion, such proceedings do not keep the decree alive for the benefit of the others.

(ii) It has been held in *Brijo Coomar Mullick v. Ram Buksh Chatterjee* (1 W. R. Mis. 2) that, when a decree is passed jointly in favour of a number of persons and one of those persons is allowed under s. 207 of Act VIII of 1859 to proceed for the recovery of the whole amount decreed, proceedings taken by him keep the decree alive for the be-

nefit of the others. *Johiroonissa Khatoon v. Ameeroonissa Khatoon* (6 W. R. Mis. 59) would seem to have been a case of this class.

(iii) In cases where the decree has been joint, but one of the decree-holders has been allowed to take proceedings to realize what, as between him and the others, has been regarded as his share, or where one of the heirs of a decree-holder has taken proceedings to realize his share of the decree, it has been held that such proceedings, even where irregular (see note (1) *supra*), kept the decree alive for the benefit of the others—*Maharanees Indurjeet Koomwar v. Mazum Ali Khan* (6 W. R. Mis. 76); *Azizunissa Khatoon v. Shoshi Bhushan Bose* (2 B. L. R. App. 47; S. C., 11 W. R. 343); *Shib Chunder Dass v. Ram Chunder Poddar* (16 W. R. 29) and cases there cited.

Where there is a decree against a number of persons, it has been held

(i) That where such decree is against all jointly proceedings taken to enforce it against one keep it alive against all—*Shakki Bunccead Ali v. Juggessar Singh*, 6 W. R. Mis. 25; *Mohesh Chunder Biswas v. Sreemutty Turamonee Dossee*, 9 W. R. 240.

(ii) That when such decree is against the defendants separately distinguishing the shares payable by each, proceedings taken against one do not keep it alive against the others—see *Wise v. Rajnarain Chuckerbutty*, 10 B. L. R. 258, by Full Bench, adopting the view taken in *Stephenson v. Unnoda Dossee*, 6 W. R. Mis. 18, and *Khema Debea v. Kumolakant Bukshi*, 10 B. L. R. 259 note, S. C., 10 W. R. 10, and overruling *Mohesh Chunder Chowdhry v. Mohun Lal Sircar*, 8 W. R. 60.

thirteen of the defendants for a portion of the sum claimed, dismissing the suit against the rest. Eight of these thirteen appealed to the Sudder Court. The plaintiffs also appealed against so much of the first Court's decision as was in favour of the defendants. The Sudder Court, dismissing the plaintiffs' appeal, reversed the decree against the defendants, including those who had not appealed from the decree. The decree of the Sudder Court, dated the 31st March, 1864, awarded costs in the Court of first instance to certain of the defendants, among whom was Ajudhia Singh, separately, and to eight sets of defendants collectively, and costs in the Sudder Court to three sets. On the 23rd March, 1867, execution of the decree was stayed pending the determination of an appeal preferred by the plaintiffs to the Privy Council. On the 11th February, 1870, the Privy Council reversed the decree of the Sudder Court so far as it reversed the decree of the Court of first instance and restored and affirmed that of the Court of first instance.

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RAM AUTAR
v.
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On the 7th September, 1871, an application for enforcing the Sudder Court's decree by the imprisonment of the judgment-debtors was made to the Court of first instance by Ajudhia Singh, who sought to recover his costs in that Court and a fractional share of the costs in the Sudder Court awarded to his set of defendants. On the 8th September the Court directed notice to issue to the judgment debtors to show cause on the 27th September why the decree should not be executed against them. On the 28th September the Court directed them to be arrested, and fixed the 1st November for the further hearing of the application. On the 7th November it directed that the application should be struck off, Ajudhia Singh having failed to deposit talabana. On the 13th August, 1874, Ajudhia Singh made a similar application. This application was also struck off owing to his failure to deposit talabana. On the 20th May, 1875, application for execution of the decree was made by him and the other decree-holders. The judgment-debtors objected that execution of the decree was barred by limitation, but the objection was overruled by the Court of first instance.

On appeal by the judgment-debtors to the High Court, it was again contended that execution of the decree was barred by limitation.

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RAM AUTAR
v.
AJUDHIA
SINGH.

The *Senior Government Pleader* (*Lala Juala Parshad*), for the appellants.

Lala Lalta Parshad and *Lala Kashi Parshad*, for the respondents.

The following judgments were delivered by the Court :—

STUART, C. J.—The application of the 7th September, 1871, prayed only for the partial execution of the decree and had not therefore the effect of keeping the decree alive for the other defendants. The same may be said of the application of the 13th August, 1874. The application of 1871 itself is before me, and it is difficult to understand how any contention to the contrary could have been expected to succeed. It recites previous applications by Ajudhia Singh in conjunction with other defendants, and also the judgment of the Privy Council, and it then proceeds :—“As the other persons do not join me in executing the decree, and in the decree the first Court’s costs are separately entered in my name, while the costs of the Sudder Court, amounting to Rs. 969-12-0, are entered in my name and in those of the other persons collectively, who do not join in executing the decree, I apply for execution in respect of a 1-11th share, leaving out 10-11ths, the share of the said persons, and pray that it may be realized from the judgment-debtors.” The application of 1874 appears to have been in similar form ; and terms more carefully and precisely restricted to the applicant’s own share could scarcely have been used, and how, in the face of them, the Subordinate Judge could have issued his orders of the 8th and 28th September, 1871, is, to say the least of it, not very intelligible.

This decree is a joint decree, and no application for its partial execution could keep it alive for the defendants as a body ; and Ajudhia Singh’s applications of 1871 and 1874, having been confined to his own individual interest in it, in the very clear and unmistakable terms to which I have adverted, could not be availed of so as to bring the present application within the three years. The order therefore recognising and proceeding upon it cannot stand. The appeal must be allowed, and with costs.

PEARSON, J.—It appears that the execution of the decree was stayed in pursuance of this Court’s order, dated 23rd March, 1867,

in consequence of an appeal lying having been lodged in the Privy Council against the decree of the late Sudder Court, dated 31st March, 1864. The appeal was disposed of by the Privy Council's decree, dated 11th February, 1870.

If it be assumed that the application made by Ajudhia Singh alone on the 7th September, 1871, for the execution of a small part of the decree was within time, under art. 167, sch. ii, Act IX of 1871, as having been presented within three years from the date of the Privy Council's decree, it must, nevertheless, be held that, inasmuch as it prayed for the partial execution of a joint decree, it was not an application according to law and had not the effect of keeping the decree in force. The same remark applies to Ajudhia Singh's last application of 13th August, 1874.

The present application by Ajudhia Singh and others of the 20th May, 1875, is therefore beyond time. I would accordingly decree the appeal with costs, and reversing the lower Court's order disallow the application.

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 RAM ADTAR
 v.
 AJUDHIA
 SINGH.

APPELLATE CIVIL.

1876
 June 1.

(*Mr. Justice Turner and Mr. Justice Spankie.*)

PURAN MAL (DEFENDANT) v. ALI KHAN (PLAINTIFF).*

Act VIII of 1859, s. 260—Execution of Decree—Certified Purchaser.

A sued for a declaration that P, the certified auction-purchaser of certain immoveable property, was merely a trustee for R, A's judgment-debtor, that the purchase in P's name was made with the intent of defeating or delaying him in the execution of his decree, and that he was at liberty to apply for execution against the property as the property of his judgment-debtor.

Held, following *Sohn Lall v. Gya Parshad*, H. C. R., N.-W. P., 1874, p. 265, that s. 260, Act VIII of 1859, was in no way a bar to the suit.

As this case merely follows the decision in *Sohn Lall v. Gya Parshad*, it is not reported in detail.

* Regular Appeal, No. 18 of 1875, from a decree of the Subordinate Judge of Bareilly, dated the 26th February, 1876.