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passed by the Small Cause Court Judge in the exercise of his ordinary jurisdiction. The description of Mr. Church in the bond as the Clerk of the Small Cause Court and of Mr. Tyrrell as the Judge of that Court is strictly accurate, and not at all incomplete by reason of the absence of any mention of the powers of a Subordinate Judge vested in the Judge of the Small Cause Court. The plea that, in reference to that description, the defendant's liability was limited to moneys paid to, or realized by, Mr. Church under decrees passed by the Judge in the exercise of his ordinary jurisdiction is not sustainable.

Decree for plaintiff with costs.

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## BEFORE A FULL BENCH.

1875. *August 5.*

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

JIWAN SINGH (JUDGMENT-DEBTOR) *v.* SARNAM SINGH (DECREE-HOLDER)*

*Execution of Decree—Limitation—Act IX of 1871, s. 15.*

*Held* (STUART, C. J., dissenting) that applications for execution of decrees are not "suits" within the meaning of *s.* 15, Act IX of 1871 (1).

ON appeal by the judgment-debtor against the order of the first Court disallowing his objection that the execution of the decree was barred by limitation, the question arose, whether, in computing the period of limitation, the time during which the decree-holder was endeavouring to obtain execution in a Court without jurisdiction should be excluded or not, under s. 15, Act IX. of 1871. The lower appellate Court held that the provisions of the section applied to applications for the execution of decrees, relying on a ruling of the High Court, dated the 1st May, 1874, in which Stuart, C. J. and Oldfield, J. ruled that the provisions of s. 14, Act XIV. of 1859,

(1) So held by Jackson, J. (McDonell, J. dissenting) in *Banee Kant Ghose* v. *Haran Kisto Ghose*, 24 W. R. 405—*contra* by Birch and McDonell, JJ, in *Rajah Promotho Nath Roy* v. *Watson & Co.*, 24 W. R. 303.

* Miscellaneous Special Appeal, No. 79 of 1874, from an order of the Judge of Ghâzipur, dated the 3rd July, 1874, affirming an order of the Subordinate Judge, dated the 17th January, 1874.

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were so applicable, expressing their concurrence in what the learned Judges considered a ruling to that effect in *Hurro Chunder Roy Chowdhry* v. *Shoorodhonee Debia* (1).

On special appeal to the High Court the judgment-debtor impugned the decision of the lower appellate Court, citing a ruling of the High Court, dated the 17th June, 1872. In that ruling Pearson and Turner, JJ. were of opinion that *Hurro Chunder Roy Chowdhry* v. *Shoorodhonee Debia* only went to show that deductions might be made in calculating the limitation prescribed by Act XIV. of 1859 for suits, and did not determine that the provisions of s. 14 of that Act applied so as to enlarge the time within which applications might be made for execution. The learned Judges held that the section applied only to original suits and not to applications for the execution of decrees, referring to *Khetturnath Dey* v. *Gossain Doss Dey* (2), in which case a similar view was taken by the Calcutta High Court, and to *Darsiah Chinniah Chenchu* v. *Godain Chetty Veeriah* (3), in which case the Madras High Court held that the provisions of s. 13 could not be applied to the execution of decrees.

The Court (Pearson and Oldfield, JJ.) referred to the Full Bench the question which of the two rulings of the High Court was the right one.

Mr. *Leach* and Bábu *Dwarka Náth Mukarji* for the appellant.

Mr. *Conlan*, Pandit *Ajudhia Náth*, and Munshi *Hanúmán Parshád* for the respondent.

The following opinions were delivered by the Full Bench:—

STUART, C. J.—I was a party to the decision of 1st May, 1874, and to the opinion I then expressed I advisedly adhere. With regard to the present reference I cannot say that an application for the execution of a decree is not a suit within the meaning of s. 15, Act IX. of 1871. I think it is. It has been repeatedly held in England that the word "suit" does include any proceeding instituted for the purpose of obtaining any beneficial order or relief, and that a petition presented for this purpose was a suit; and I observe it has been used in that sense in the practice of the American Courts. In Kent's Commentaries on the American Law, vol. i,

(1) 9 W. R. 402 (2) 4 W. R. Misc. 18 (3) 4 Mad. Jur. 101.

p. 314, note (*d*), 11th ed. published in 1867, two cases are referred to in which it was decided that a *mandamus* is a "suit, for it is a litigation in a court of justice seeking a decision," and in the Calcutta case referred to by the Officiating Judge of Ghâzipur (1), the following passage occurs in the judgment of Sir Barnes Peacock, Chief Justice :—"The word "suit" does not necessarily mean an action, nor do the words "cause of action" and "defendant" neces sarily mean cause upon which an action has been brought, or a person against whom an action has been brought, in the ordinary restricted sense of the words. Any proceeding in a Court of Justice to enforce a demand is a suit; the person who applies to the Court is a suitor for relief; the person who defends himself against the enforcement of the relief sought is a defendant; and the claim, if recoverable, is a cause of action." The meaning of this, I think, is that the word "suit", as used in s. 15 of the Limitation Act, does not mean a suit or action in an exclusively technical sense, but simply and generally any proceeding intended and adapted to the recovery or vindication of any right or demand or material advantage. Such was undoubtedly the meaning put upon the word "suit" by lawyers before Act IX. of 1871 was passed; and the question therefore is whether there is anything in that Act to change the construction which up to that time had been put upon the term. I do not see that there is, nor do I understand that the mere mention of applications in the Act distinct from suits can have the effect of limiting the general relief or benefit that by s. 15 is intended. I would, therefore, answer this reference by saying that the above ruling is right, and that an application for the execution of a decree is a suit within the meaning of s. 15, Act IX of 1871.

PEARSON, J.—I was myself a party to the decision of the 17th June, 1872, and on re-consideration adhere without hesitation or doubt to the opinion therein expressed. Throughout the Act IX. of 1871 the distinction between suits and applications is never forgotten; they are never confounded together. The particular section (15) which we have to consider enacts that, "in computing the period of limitation prescribed for any *suit*, the time during

(1) *Hurro Chunder Roy Chowdhry* v. *Shoorodhonee Debia*, 9 W R 402.

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which the plaintiff has been prosecuting with due diligence another *suit*, whether in a Court of first instance or in a Court of appeal, against the same defendant or some person whom he represents, shall be excluded, where the last-mentioned suit is founded on the same right to sue, and is instituted in good faith in a Court which from defect of jurisdiction, or other cause of like nature, is unable to try it." The cases in which a plaintiff may honestly make a mistake as to the Court in which his suit should be brought are not unfrequent; and therefore the provision contained in s. 15 is quite suitable to a suit. But the case in which a decree-holder could *bonâ fide* attempt to execute his decree in a wrong Court must be very peculiar and exceptional; and a general provision of law is therefore not required to meet a case which can hardly ever occur. It is remarkable that ss. 16, 17, 18, 19, and 20 are only applicable to original suits; and it may reasonably be assumed that, if s. 15 had been intended to apply to applications for execution of decree as well as to suits, the intention would have been expressed and made known in an explanation like *Explanation* 2, which intimates that "a plaintiff resisting an appeal presented on the ground of want of jurisdiction shall be deemed to be prosecuting a suit within the meaning of this section." In the absence of any such explanation, regard being also had to the distinction which is observed throughout the Act between suits and applications, I conceive that s. 15 must be held to apply to suits as distinguished from applications, and that the word suit therein used does not include an application for the execution of a decree.

TURNER, J.—I concur in the opinion delivered by Mr. Justice Pearson, and place the same construction on the 15th section of Act IX. of 1871 as I have heretofore placed on the similar section of Act XIV. of 1859.

SPANKIE, J.—I accept Mr. Justice Pearson's opinion as conclusive on the point referred to us.

OLDFIELD, J.—Looking to the terms of s. 15, Act IX. of 1871, I do not think the provisions of that section were intended to apply to applications for execution of decrees, but only to suits in their strict sense.

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It will be observed that throughout Act IX. of 1871 a distinction is made between suits, appeals and applications. It is to be found in the preamble of the Act, and again notably in s. 4, and in the second schedule, which prescribes the period of limitation applicable to three divisions of subjects, suits, appeals and applications, amongst the last of which are found enumerated applications for executions of decrees.

I think Act IX. of 1871 clears up what was obscure in Act XIV. of 1859, under which the word suit may have been used in a wide sense, so as to include an application to enforce execution of a decree.

The title of Act XIV. of 1859 is an "Act to provide for the limitation of suits," and the preamble is "whereas it is expedient to amend and consolidate the laws relating to limitation of suits, it is enacted as follows :" but the title and preamble of Act IX. of 1871 differ materially, Act IX. of 1871 being "an Act for the limitation of suits and for other purposes," and it recites, "whereas it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts, &c." Whereas in Act IX. of 1871 suits and applications are separately treated, the word suit cannot, I apprehend, be held to mean and include an application.

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## BEFORE A FULL BENCH.

1875. *August* 10.

*(Mr. Justice Turner, Officiating Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, and Mr. Justice Oldfield.)*

TEJ RÁM AND OTHERS (AUCTION-PURCHASERS) *v.* HARSUKH (JUDGMENT-DEBTOR).

*Stat. 24 and 25 Vic., c. 104, s. 15—Powers of Superintendence of High Court —Revision of Judicial Proceedings—Jurisdiction.*

The High Court is not competent, in the exercise of the powers of superintendence over the Courts subordinate to it conferred on it by s. 15 of 24 and 25 Vic., c. 104, to interfere with the order of a Court subordinate to it on the ground that such order has proceeded on an error of law or an error of fact.

Where, therefore, on appeal by the judgment-debtor against an order confirming a sale of immoveable property in the execution of a decree, the lower Court set aside the sale, on a ground not provided by law, and the auction-purchasers