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June 21.

*Before Mr. Justice O'Field and Mr. Justice Mahmood.*

TARSI RAM (DECREE-HOLDER) v. MAN SINGH AND OTHERS (JUDGMENT-DEBTORS)\*

*Execution of decree—Adjudication that execution is barred by limitation—Finality of order—Civil Procedure Code, s. 206—Amendment of decree—Act XV of 1877 (Limitation Act), sch. ii, Nos. 178, 179.*

An application to execute a decree passed in April, 1880, was made on the 19th February, 1884, and rejected on the 26th March, 1884, as being beyond time. This order was upheld on appeal in March, 1885. While the appeal was pending the decree-holder in May, 1884, applied to the Court of first instance to amend the decree under s. 206 of the Civil Procedure Code, and in December, 1884, the application was granted. In April, 1885, an application was made for execution of the amended decree, the decree-holder contending that limitation should be calculated from the date of the amendment, and that art. 178 of the Limitation Act (XV of 1877) applied to the case.

*Held* that No. 179 and not No. 178 was applicable, that the order rejecting the application of the 19th February, 1884, became final on being upheld on appeal, that the amendment could not revive the decree or furnish a fresh starting point of limitation, and that the application was therefore time-barred. *Munqul Pershad v. Grija Kant Lahiri* (1) and *Ram Kirpal v. Rup Kuari* (2) referred to.

Observations by MAHMOOD, J., on the amendment of decrees and s. 206 of the Civil Procedure Code.

THE decree, of which execution was sought in this case, was dated the 2nd April, 1880. An application to execute the decree made on the 19th February, 1884, was refused on the 26th March, 1884, on the ground that it had not been made within the time allowed by law. The decree-holder appealed from this order. While the appeal was pending, he applied to the Court which passed the decree to amend it under s. 206 of the Civil Procedure Code. This application was granted on the 6th December, 1884. On the 25th March, 1885, the appeal was dismissed.

On the 2nd April, 1885, the decree-holder again applied for execution. The Court of first instance refused the application, and its order was affirmed on appeal by the decree-holder. It was contended before the lower appellate Court, on behalf of the decree-holder, that limitation should be computed from the date of the

\* Second Appeal No. 13 of 1886, from an order of W. T. Martin, Esq., District Judge of Aligarh, dated the 15th September, 1885, affirming an order of Lala Ganga Prasad, Munsif of Koil, dated the 11th July, 1885.

(1) I. L. R., 8 Calc. 51; L. R., 8 Ind. Ap. 123.

(2) I. L. R., 6 All. 269; L. R., 11 Ind. Ap. 37.

amendment of the decree, the article of the Limitation Act applying being No. 178.

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The decree-holder, in second appeal, raised the same contention.

Mr. *Shiva Nath Sinha*, for the appellant.

Babu *Jogindro Nath Chaudhri*, for the respondents.

OLDFIELD, J.—The only ground taken in the memorandum of appeal is, that the application is one to which art. 178, and not 179, Limitation Act, applies; but this is not so.

The application is to execute a decree dated the 2nd April, 1880, and is governed by art. 179. On the 19th February, 1884, the decree-holder applied to execute this decree, and it was held to be then barred by limitation.

He subsequently got the Court to amend the decree under s. 206, Civil Procedure Code, and now seeks to execute it as amended; but his decree had been held by an order to be barred by limitation before the amendment, and that order has become final in the matter of executing the decree.

This appeal is dismissed with costs.

MAHMOOD, J.—I am of the same opinion. The decree sought to be executed was passed on the 2nd April, 1880, and was put into execution by an application dated the 19th February, 1884; but execution was disallowed by an order dated the 26th March, 1884, on the ground that it was barred by limitation, and that order was upheld by the Court of appeal on the 25th March, 1885. The adjudication thus became conclusive and final within the principle of the rulings of the Privy Council in *Mungul Pershad v. Grija Kant Lahiri* (1) and *Ram Kirpal v. Rup Kuari* (2). But in the meantime the appellant-decree-holder, during the pendency of his appeal, made an application, on the 12th May, 1884, to the Court of first instance, to amend the decree under s. 206 of the Civil Procedure Code, and the application was granted on the 6th December, 1884.

The present application was made on the 2nd April, 1885, for execution of the *amended* decree, on the contention that limitation

(1) I. L. R., 8 Calc. 51; L. R., 8 Ind. Ap. 123.

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should be calculated from the date of the amendment, but both the lower Courts have disallowed the application.

I agree with my learned brother Oldfield in holding that the lower Courts acted rightly in rejecting the application. Irrespective of the merits of the amendment itself, I hold that such amendment could neither revive the decree nor furnish a fresh starting point of limitation, whilst there is of course the further consideration that the question of the decree being barred had passed into *rem judicatam*, as I have already pointed out, with reference to the Privy Council rulings.

I now wish to add that the provisions of the last paragraph of s. 206, Civil Procedure Code, have given rise to some difficulty and doubt, and I cannot help feeling that it would have been conducive to clearness, and accuracy, and uniformity of procedure in the Mufassal Courts, if the Legislature had thought fit to frame the paragraph as a separate section, and to have introduced therein definite restriction and limits as to the time within which, and the stage when, the power of amending decrees might be exercised. For instance, if a decree has already become the subject of appeal, I do not think the first Court should amend it under s. 206, for the Full Bench of this Court in *Shohrat Singh v. Bridgman* (1) has held that the decree of the appellate Court is the only decree susceptible of execution, and the specifications of the decrees of the lower Courts as such may not be referred to and applied by the Court executing such decree. Again, in connection with this same section, I may refer to what I said in *Raghunath Das v. Raj Kumar* (2) and also in *Surta v. Ganga* (3), in both of which cases my judgments were upheld and approved by the Full Bench of this Court (I. L. R., 7 All., pp. 875 and 876). Those cases furnish good illustrations of the manner in which the power conferred by the section may be misapplied in the absence of more definite provisions prescribing rules for guidance. I may perhaps also add that the section should also contain an express provision to say that when a decree-holder has so far accepted a decree as framed as to put it into execution, no amendment should be allowed, and the reason should be that the proper stage for such amendment is

(1) I. L. R., 4 All. 876. (2) I. L. R., 7 All. 276.

(3) I. L. R., 7 All. 411.

passed. I may here quote what Markby, J., said in *Goluck Chunder Mussant v. Gunga Narain Mussant* (1):—"It is the duty of the parties, or rather of their pleaders, when they obtain a decree, to see that it is drawn up in the proper form, and it has been ordered by a circular order of this Court of the 19th July, 1867 (8 W. R. Civ. Cir. 2), that the Judges should obtain the signatures of the pleaders before the decree is finally signed. If the parties chose to allow so long a time as that allowed in this case to elapse, before they take any steps upon the decree, without taking any precaution to see that the decree is properly drawn up, it seems to us that it may be fairly presumed that they acquiesced in the decree, and that no alteration ought to be made subsequently." The rule laid down by Couch, C. J., in *Prince Mahomed Ruhim-ood-din v. Bahu Bher Protah Suhai* (2) has almost a stronger tendency in the same direction.

Again, a Division Bench of this Court, in *Goya Prasad v. Sikri Prasad* (3) held that an application for an amendment of decree under s. 206, Civil Procedure Code, was governed by three years' limitation under art. 178, sch ii of the Limitation Act. But I respectfully doubted the accuracy of the rule in the case of *Raghnath Das*, to which I have already referred; and my view was supported by the principle upon which the rulings of the other High Courts proceed—*vide Roberts v. Harrison* (4), *Kylasa Goundan v. Ramasami Ayyan* (5), *Vithal Janardan v. Rakmi* (6).

These observations may possibly prove of some service to the Legislature when considering the question of the amendment of the Civil Procedure Code.

*Appeal dismissed.*

*Before Mr. Justice Oldfield and Mr. Justice Mahmood.*

BALBHADAR AND OTHERS (DEFENDANTS) v. BISHESHAR (PLAINTIFF).\*

*Hindu Law—Joint and undivided Hindu family—Joint and undivided property—Death of deceased member—Liability of his interest.*

J, a member of a joint Hindu family, lent two sons, R and S. S borrowed money upon a simple bond, and, after his death, the obligee sued his

\* Second Appeal No. 1469 of 1885, from a decree of R. J. Leeds, Esq., District Judge of Gwalior, dated the 16th May, 1885, confirming a decree of Maulvi Abdul Razak, Munsif of Bansi, dated the 15th November, 1884.

(1) 20 W. R. 111.

(4) I. L. R., 7 Calc. 333.

(2) 18 W. R. 368.

(5) I. L. R., 4 Mad. 172.

(3) I. L. R., 4 All. 23.

(6) I. L. R., 6 Bom. 586.

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