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by their express admissions in 1872, have furnished sufficient grounds to justify the first Court's finding that they made themselves liable to the appellant in respect of the obligations and liabilities created by the persons who executed the mortgage to the appellant of 1869.

And, as to the question of the retrospective application of the rule of s. 7 of Act XVIII. of 1873, I doubt if it be really involved in this case. Himayat Husain mortgaged his *sír* in 1869, and in 1876, his *sír* rights and interests, as such, went out of existence under the operation of the law of 1873 and assumed a different character. Over that tenure in its altered character the appellant still has his mortgage charge, but he has not, in the existing state of the law, a right to physical possession of the actual land, which was formerly Himayat Husain's *sír*, but is now his occupancy tenure.

Subject to this new right of Himayat Husain, the appellant retains his mortgage charge of 1869 over the zamindari interests in this portion of the land acquired by Himayat Husain's vendee. But as the present claim of the appellant is for possession only, it is unnecessary to go further into this aspect of the question.

Before Mr. Justice Oldfield and Mr. Justice Mahmood.

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JOKHU RAM AND OTHERS (JUDGMENT-DEBTORS) *v.* RAM DIN AND ANOTHER (DECREE-HOLDERS).*

Execution of decree—Civil Procedure Code, s. 230—Twelve years' old decree—Statute, construction of—General words—Retrospective effect.

The holder of a decree bearing date the 15th June, 1872, applied for execution thereof on the 9th February, 1885, the previous application being dated the 27th November, 1883.

Held that the application for execution was not barred by s. 230 of the Civil Procedure Code. *Musharraf Begam* v. *Ghalib Ali* (1) followed. *Goluck Chandra Mytee* v. *Harapriah Debi* (2), *Bhawani Das* v. *Daulat Ram* (3), and *Sreenath Goohe* v. *Yusoof Khan* (4) referred to. *Tufail Ahmad* v. *Sadhu Saran Singh* (5) discussed and dissented from by MAHMOOD, J.

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* Second Appeal No. 23 of 1886, from an order of R. J. Leeds, Esq., District Judge of Gorakhpur, dated the 16th February, 1886, reversing an order of Shah Ahmad-ullah Khan, Subordinate Judge of Gorakhpur, dated the 11th August, 1885.

(1) I. L. R., 6 All. 189.
(2) I. L. R., 12 Calc. 559.
(3) I. L. R., 6 All. 383.
(4) I. L. R., 7 Calc. 556.
(5) Weekly Notes, 1885, p. 193.

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Per MAHMOOD, J.—The rule of construction being that a limited meaning can only be given to general words in a statute where the statute itself justifies such limitation, the words "any decree" in the proviso to s. 230 of the Civil Procedure Code must not be construed as confined to such decrees as would be barred on the date of the Code coming into force, inasmuch as no reason for so restricting the meaning of those words can be found in the Code or is suggested by the legislative policy upon which clauses such as the proviso in question are based. This policy is to prevent a sudden disturbance of existing rights in consequence of new legislation; but it is beyond its object and scope to revive rights or remedies which have already expired before the new Act comes into operation, and although the Legislature may revive such rights or remedies, it can only do so by express words to that effect.

THE decree of which execution was sought in this case was a decree for money bearing date the 15th June, 1872. The decree-holder applied for execution on the 9th February, 1885, the previous application being dated the 27th November, 1883. The Court of first instance held, relying on *Tufail Ahmad* v. *Sadho Saran Singh* (1), that the application was barred by limitation, under the provisions of s. 230 of the Civil Procedure Code, 1882. On appeal by the decree-holders the lower appellate Court held, with reference to *Musharraf Begam* v. *Ghalib Ali* (2), that the application, being the first which had been made under s. 230 of the Civil Procedure Code, 1882, after the decree became twelve years' old, was within time. The Court refused to follow *Tufail Ahmad* v. *Sadho Saran Singh* (2), as that case was, in its opinion, opposed to *Musharraf Begam* v. *Ghalib Ali* (1), which was a decision of the Full Bench.

The judgment-debtors appealed to the High Court.

Mr. *C. H. Hill* and Munshi *Hanuman Prasad*, for the appellants.

Babu *Jogindro Nath Chaudhri*, for the respondents.

OLDFIELD, J.—This is an appeal against the order of the lower appellate Court granting an application to execute a decree dated the 15th June, 1872. Applications for executing the decree had been made and granted at numerous dates down to that dated the 27th November, 1883, and the application of the 9th February, 1885, which is the subject of this appeal.

(1) Weekly Notes, 1885, p. 193. (2) I. L. R., 6 All. 189.

The lower appellate Court has held, following the Full Bench decision of this Court—*Musharraf Begam* v. *Ghalib Ali* (1)—that this last application is not barred by s. 230 of the Civil Procedure Code.

It is clear that the present application of the 9th February, 1885, was made after the expiry of twelve years from the date of the decree, and after twelve years from all the dates mentioned in s. 230. The last paragraph of this section, giving it the interpretation of the Full Bench ruling referred to, cannot be a bar to the application, because it was made within the three years from the coming into operation of the present Code; and though the application would be barred by s. 230 of Act X of 1877, yet that section, under the Full Bench ruling, is not applicable. Under these circumstances the order of the lower appellate Court must be upheld, and this appeal, as well as Nos. 22, 24, and 25 of 1886, must be dismissed with costs.

MAHMOOD, J.—I have arrived at the same conclusion as my brother Oldfield, and sitting here as a Division Bench of the Court, we have no alternative but to follow the decision of the majority of the Judges in the Full Bench case of *Musharraf Begam* v. *Ghalib Ali* (1). I was not a party to that ruling, and I should probably find it difficult to agree with the prevailing opinion in that case, for I have long entertained views which are in accord with those expressed by my brother Oldfield in his dissentient judgment in that case. Those views have since been unhesitatingly accepted by a Division Bench of the Calcutta High Court in *Goluck Chandra Mytee* v. *Harapriah Debi* (2); but, as I said before, I am not at liberty to form my own opinion upon the matter on account of the opinion of the majority in the Full Bench case. Soon after that ruling, however, I had occasion in *Bhawani Das* v. *Daulat Ram* (3) to draw a distinction between the Full Bench ruling and cases in which the decree had already become barred, and, as such, incapable of execution, before the Civil Procedure Code of 1882 became law. That ruling has since been followed in many cases. That ruling, however, does not apply to this case, because the decree here had not become

(1) I. L. R., 6 All. 189. (2) I. L. R., 12 Calc. 559.
(3) I. L. R., 6 All. 383.

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incapable of execution before the present Civil Procedure Code.

The decree with which we are concerned was passed on the 15th June, 1872, and calculating twelve years from that date, it was alive when the present Civil Procedure Code came into operation. After numerous executions, an application for execution was made on the 27th November, 1883, which was granted under the present Code, and the present application was made on the 9th February, 1885, that is, more than twelve years after the decree, but within three years of the passing of the present Code. The question then is, whether, under such circumstances, the execution of the decree is barred; and the question must be answered in the negative with reference to the Full Bench ruling above cited. The exact effect of that ruling is twofold:—

First—that the phrase "the law in force immediately before the passing of this Code" in the proviso to s. 230 of the present Code does not include the limitation provisions of s. 230 of the Civil Procedure Code of 1877.

Secondly—that the holder of a decree which was not more than twelve years old when the present Code was passed is entitled, under the proviso, to have, after the decree has become older than twelve years, "one opportunity, and only one, to execute it, whether he succeeds in obtaining satisfaction of it or not."

For this second point the learned Judges of the majority of the Full Bench relied upon the ruling of the Calcutta High Court in *Sreenath Gooho* v. *Yusoof Khan* (1), and I understand the effect of this to be that execution of a decree older than twelve years can be "granted" only once under the proviso to s. 230 of the present Code.

Now, I need say nothing as to whether, speaking for myself, I am prepared to except either of these conclusions, for, as I said before, it is my duty to apply them to the present case. Then what we have here is that the decree of the 15th June, 1872, was less than twelve years old when the present Code came into operation, and it became twelve years old on the 15th June, 1884, and is not affected by the twelve years' rule contained in s. 230

(1) I. L. R., 7 Calc. 556.

of the Code of 1877. Then the present application for execution, being dated the 9th February, 1885, is the first application made after the decree became older than twelve years, and must be entertained as the only opportunity to execute his decree, which must be allowed to the decree-holder, within the second conclusion of the Full Bench ruling as already indicated by me.

I should have ended my observations here but for the circumstance that a case has been cited by the learned pleader for the appellant as favouring his contention, and it does support his contention. It is the case of *Tufail Ahmad* v. *Sadhu Saran Singh* (1), which, I frankly confess, has caused me no small amount of surprise. In that case Petheram, C.J., laid down a rule of law which is in conflict not only with the Full Bench ruling in *Musharraf Begam's Case* (2) and my ruling in *Bhawani Das* (3), but also with some of the most important rules of interpretation which have always been adopted by the Courts of Justice, whether in England or in India. A profound respect for so learned and eminent an authority forces me to examine carefully this ruling, in order to ascertain whether I can possibly adopt the *ratio decidendi* upon which it proceeded. The learned Chief Justice in that case observed :—

"It appears that the decree sought to be executed was passed on the 15th September, 1870, and the present application for execution was made on the 14th March, 1884. From these figures it is clear that the application for execution was made after the expiration of twelve years from the date of the decree. Now, s. 230 of the Civil Procedure Code provides that no application for execution of the decree shall be granted after the expiration of twelve years from the date of the decree. The present application would be barred by s. 230, unless it came within the proviso to that section. That proviso is to the effect that, 'notwithstanding anything herein contained, proceedings may be taken to enforce any decree within three years after the passing of this Code, unless when the period prescribed for taking such proceedings by the law in force immediately before the passing of the Code shall have expired before the completion of the said three years.' Now the

(1) Weekly Notes, 1885, p. 193. (2) I. L. R., 6 All. 139.
(3) I. L. R., 6 All. 388.

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meaning of this rule is that inasmuch as it would be a hardship that a decree which was capable of execution should, by the operation of the twelve years' rule, become incapable of execution on the passing of the Code, a further period of three years was allowed to enable the decree-holder to execute the decree."

So far I concur with the learned Chief Justice; but then he goes on to say what seems to me inconsistent with the passage which I have already quoted from his judgment. He goes on to say:—"This proviso applies to those decrees which would be barred on the date of the Code coming into force, and does not apply to those decrees which were not barred by the twelve years' rule when the Code came into force, by reason of the fact that the period of twelve years had not expired from the date mentioned in s. 230. Now the Code came into force in June, 1882, and the decree-holder could have availed himself of the three months up to September, 1882, when the twelve years expired. Under these circumstances the proviso is inapplicable, and the execution of the decree is barred by limitation. The Full Bench ruling brought to our notice is not applicable to the point which arises in this appeal."

Now, I am anxious to see what this passage actually enunciates. It may be summarized thus :—

First—that the proviso to s. 230 is confined to decrees which would be barred by the twelve years' rule "on the date of the Code *coming into force;* that is, on the 1st June, 1882 (*vide* s. 1 of the Code);

Secondly—that the proviso does not apply to, or benefit, decrees which would be not so barred;

Thirdly—that in the case of the latter class of the decrees, all the period that they would be entitled to for execution, is the remaining portion of the twelve years upon the Code *coming into force;*

Fourthly—that by the application of these rules in the case before the learned Chief Justice, the decree-holder was entitled to only three months after the Code came into force: and

Fifthly—that the case before him was distinguishable from the Full Bench ruling of this Court in *Musharraf Begam* v. *Ghalib Ali* (1).

Now, if this enunciation of the law is sound, there can be no doubt whatever that the appellant in this case must succeed; because, with reference to the first two points of the ruling of Petheram, C.J., the proviso to s. 230 would not benefit the decree, it being less than twelve years old when the Code came into force; and with reference to the third and fourth points of that ruling, the respondent here could execute his decree only up to the 15th June, 1884, when it became twelve years old; and it would therefore follow that the execution sought to be obtained on the 9th February, 1885, would be barred by the twelve years' rule. But I respectfully think that all the various points laid down in that ruling are erroneous and opposed to all that has ever been ruled as to the meaning of s. 230 of the Code. I know that this is a strong statement to make in respect of the judgment of so distinguished a legal authority as Petheram, C.J., and the deference due to him from the Court of which he was till lately the Chief Justice requires that I should, with due respect, explain my reasons more fully than would otherwise be necessary. I will therefore take each of the points ruled by Petheram, C.J., in the order in which he ruled them, and in which I have stated them.

Taking the first and second points then, I have to ask what reason is there for holding that the phrase "*any decree*" which occurs in the proviso to s. 230 of the Code is limited to decrees older than twelve years, and does not include decrees less than twelve years' old? The expression is, as I understand the English phrase, a general one, and to use the words of Mr. Wilberforce in his excellent work on *Statute Law* (p. 172), "it is clear that a limited meaning can only be given to general words, where the Act itself, or the legitimate methods of interpreting it, show that such was the intention of the Legislature." Again, Sir William Grant says in *Beckford* v. *Wade* (2):—"General words in a statute must receive a general construction, unless you can find in the statute itself some ground for limiting and restraining their meaning by reasonable construction, and not by arbitrary

(1) I. L. R., 6 All. 189. (2) 17 Ves., at p. 91.

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addition or retrenchment." Again, we have the *dictum* of Lord Chief Justice Cockburn in *Twycross* v. *Grant* (1) :—" I take it to be a sound canon of construction in the application of a statutory enactment that full effect should be given to general terms, unless from the context, or other provisions of the statute, a limitation on the general language must necessarily be implied, more especially when had such a limitation been intended it might reasonably have been expected to be expressed." And further authority upon the same point which Mr. Wilberforce quotes is the judgment of Williams, J., in *Garland* v. *Carlisle* (2), where the learned Judge observes :—" When the words of the Act are general and comprehensive and the object clear, nothing short of gross and manifest inconsistency with that object, or plain and palpable injustice which must inevitably ensue from such a construction, can authorize Courts of Law in giving a more confined and limited meaning to such general expressions than they ordinarily and naturally import and bear. What else is restraining by inference or varying by interpretation but to a certain extent recasting and remodelling the statute, or, in other words, invading the province of the Legislature itself?"

Such, then, being the undoubted rule of construction, there must be some reason to be found in the Code itself which would justify limiting the general expression "*any decree*" only to "those decrees which would be *barred* on the date of the Code *coming into force*." Petheram, C.J., in so restricting the meaning of the general phrase, has not stated any reasons, and speaking for myself, I fail to discover any in the Code. On the contrary, the legislative policy, upon which clauses such as the proviso to s. 230 are based, suggests no such restriction. "If the Legislature of a State should pass an Act by which a *past* right of action shall be barred, and without any allowance of time for the institution thereof *in future*, it would be difficult to reconcile such an Act with the express constitutional provisions in favour of the rights of private property. So if in a State, where six years, for instance, may be pleaded in bar to an action of *assumpsit*, a law should be passed declaring that contracts already in existence, and not barred by the statute, should be construed to be within it, such law, with-

(1) L. R., 2 C. P. D., at pp. 530, 531. (2) 4 Cl. and Fin. at p. 726.

out doubt, would be deemed unconstitutional" (Angell on Limitation, (4th ed.) p. 17). No wise Legislature ignores these fundamental principles of legislation, and we have in India another illustration of their application in the saving-clause in s. 2 of the Limitation Act (XV of 1877), in regard to suits for which the period prescribed by the Act is shorter than that prescribed by the superseded Limitation Act, 1871. Now, it is perfectly clear from the very nature of such saving-clauses, that the object of the Legislature is to prevent a sudden disturbance of existing rights in consequence of the new legislation, and to achieve that object the Legislature, in altering the law, allows a period of grace within which existing rights may be enforced without being affected by the new law. In other words, during the period of grace so allowed, the operation of the new law is suspended, so far as it would operate in derogation of existing rights, and the law having given due notice of the change, expects those whose rights would be adversely affected to enforce those rights before the period of grace expires. But it is necessarily beyond the object and scope of such saving-clauses to revive rights or remedies which have already expired and become defunct before the new Act comes into operation. That the Legislature may so revive rights and remedies is undoubtedly true, but the general rule is contained in the maxim of construction: "*Nova constitutio futuris formam imponere debet, non præteritis,*" and an equally well-recognised rule of construction requires express words in statutes before they can be construed as taking away existing rights, or reviving those which have already expired before the new enactment comes into operation. No such express words exist in the proviso to s. 230 as would have the effect of reviving barred decrees, and it was upon this principle that my ruling in *Bhawani Das* v. *Daulat Ram* (1) proceeded. The ruling of Petheram, C.J., however, lays down the very opposite doctrine, because, according to him, the "proviso benefits only such decrees as would be *barred* on the date of the Code coming into force, and does not apply to those decrees which were not barred by the twelve years' rule when the Code came into force, and which could have been executed on the Code coming into force by reason of the fact that the period of twelve years had not expired from the date men-

(1) I. L. R., 6 All. 388.

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tioned in s. 230." This amounts to saying that decrees which were already barred under the Code of 1877 were revived by the new Code—a conclusion which, in the absence of express words in the Code, I am unable to accept.

I now proceed to consider whether I can accept what I have enumerated as the third and fourth points of the learned Chief Justice's ruling. Now, I must observe, in the first place, that the Full Bench ruling of this Court in *Musharraf Begam* v. *Ghalib Ali* (1), which the learned Chief Justice was bound to follow as much as I am, leaves us no room for holding that the phrase "law in force immediately before the passing of this Code" had any reference to the limitation provisions of s. 230 of the Code of 1877, which provided, for the first time in the Indian law, a period of twelve years as the duration for execution of decrees. This being so, I entirely fail to understand how any decrees coming within the purview of the proviso could be restricted to twelve years from this date, if the twelve years expired before the completion of the three years' grace allowed by the proviso. But, as I have already said, the view of the learned Chief Justice was, that the proviso applied only to decrees older than twelve years; and inasmuch as the decree before him—to use his own words—was one of "those decrees which were not barred by the twelve years' rule when the Code came into force," he held, in logical consistency with this view, that the decree before him could be executed only during the three months intervening between the date "when the Code came into force" and the date "when the twelve years expired." But I confess I find it difficult to understand how these *three months* allowed in the case can be reconciled with the *three years* to which the learned Chief Justice referred in an earlier part of the judgment, when he said:—"That inasmuch as it would be a hardship that a decree which was capable of execution should, by the operation of the twelve years' rule, become incapable of execution on the passing of the Code, a further period of three years was allowed to enable the decree-holder to execute the decree." Indeed, the only way to reconcile the various portions of the learned Chief Justice's judgment seems to be to say that he held that, whilst a decree, which would be barred by the twelve years' rule on the

(1) I. L. R., 6 All. 189.

passing of the Code, would have the benefit of the proviso to s. 230, and would thus be entitled to a further period of full three years for the purposes of execution, a decree which, on that date, was eleven years, eleven months, and twenty-nine days old, would be allowed only one day for execution. I have put the matter in this strong light because such, indeed, is the effect of the ruling which I am now considering. How the learned Chief Justice distinguished the case before him from the Full Bench ruling of this Court is a matter upon which his judgment is totally silent, and, speaking for myself, I am wholly unable to see any distinction. And this is all I wish to say upon what I have enumerated as the fifth point of the learned Chief Justice's judgment.

But I must add that I have regarded it as my duty to consider the ruling in *Tufail Ahmad* v. *Sadhu Saran Singh* (1), not only out of the deference which is due by this Court to its late learned Chief Justice, but also because, if I had felt disposed to follow that ruling, I should have asked my learned brother Oldfield to allow this case to go before the Full Bench. But, for the reasons which I have already stated, I respectfully decline to regard the ruling either as sound law in itself or as consistent with the Full Bench ruling which we are bound to follow. My order then is the same as that of my brother Oldfield.

Appeal dismissed.

Before Mr. Justice Straight, Offg. Chief Justice, and Mr. Justice Mahmood.

1886 *May* 20.

SACHIT AND ANOTHER (DEFENDANTS) *v.* BUDHUA KUAR (PLAINTIFF)*

Hindu widow—Decree against widow—Fraud—Reversioner.

Upon the death of *R*, a Hindu, who was separate from his brother *S*, his widow *G* became life-tenant of his estate, and his daughter *B* became entitled to succeed after *G*'s death. In 1882, a suit was brought by *S* and *G* against *V*, to recover the value of a branch of a mangoe tree wrongfully taken by the defendant, and for maintenance of possession over the grove in which the tree was situate. The suit was dismissed, and it was decided that *R* was not the owner of the grove, nor was *G* the owner. In 1885 *B* brought a suit against *G*, *S*, *V* and *A*, to whom *V* had sold some of the trees, claiming a declaration of her right and possession of the grove, upon the allegation that the proceedings of 1882 were carried on in

* Second Appeal No. 1598 of 1885, from a decree of Rai Raghunath Sahai, Subordinate Judge of Azamgarh, dated the 20th June, 1885, reversing a decree of Munshi Sheo Sahai, Second Munsif of the city of Gorakhpur, dated the 11th January, 1885.

(1) Weekly Notes, 1885, p. 193.