

1887
January 31.

APPELLATE CIVIL.

Before Mr. Justice Oldfield.

DARBO (PETITIONER) v. KESHU RAI (OBJECTOR).*

*Amendment of decree—Limitation—Civil Procedure Code, s. 206—Act XV of 1877
(Limitation Act), sch. ii, No. 178.*

Art. 178 of schedule ii of the Limitation Act (XV of 1877) applies only to applications made to a Court to exercise powers which, without being moved by such application, it is not bound to exercise, and not to applications to a Court to do acts which it has no discretion to refuse to do. It does not govern an application under s. 206 of the Civil Procedure Code, for amendment of a decree so as to bring it into conformity with the judgment, it being the bounden duty of a Court, of its own motion, to see that its decrees are in accordance with the judgments and to correct them if necessary. *Gayu Prasad v. Sitri Prasad* (1) dissented from. *The petition of Kishan Singh* (2), *Kylasa Goundan v. Ramasami Ayyan* (3), and *Vithal Janardan v. Vithojirav Putlajirav* (4) referred to.

THIS was an application under s. 206 of the Civil Procedure Code, by the holder of a decree of the High Court, dated the 13th August, 1879, for amendment of the decree, by bringing it into conformity with the judgment. It was alleged in the application that although, according to the judgment, recovery of possession of certain immoveable property was awarded to the applicant, no such relief was mentioned in the decree. The application was dated the 13th August, 1886. On behalf of the judgment-debtor it was not denied that the decree was at variance with the judgment, but it was contended that the application under s. 206 of the Code was barred by limitation, with reference to art. 178 of the second schedule of the Limitation Act, (XV of 1877). It appeared that the decree itself had been kept alive, but that, owing to the omission in the decree, the decree-holder had been unable to obtain possession of a portion of the property to which the judgment declared him entitled.

Munshi *Kashi Prasad*, for the applicant.

Pandit *Bishambhar Nath*, for the respondent.

OLDFIELD, J.—The petitioner asks the Court to amend the decree of this Court of the 13th August, 1879, so as to bring it into conformity with the judgment of this Court. There is no

* Miscellaneous Application No. 224 of 1886.

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

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

(2) Weekly Notes, 1883, p. 262.

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

doubt, and it is admitted by the opposite party, that the decree requires amendment in the manner asked for; but it is contended that the application is governed by art. 178 of the Limitation Act, as it is one of those applications for which no period of limitation is provided elsewhere in the schedule or by the Code of Civil Procedure, s. 230.

If this article be applicable, there is no doubt that the application is barred, and, in support of the respondent's contention, I have been referred to a decision of a Bench of this Court—*Gaya Prasad v. Sikri Prasad* (1). It is possible, however, that this case may be considered as overruled by *Kishan Singh's* case (2) as opposed to the principle therein laid down. I entertain some doubts whether the article does apply, because it appears to me that the article applies only to applications made to a Court to exercise powers which, without being moved by such application, it is not bound to exercise, and not where a Court is asked to do an act which it has no discretion to refuse to do. This has been held by the Madras Court in *Kylasa Goundan v. Ramasami Ayyan* (3), by the Bombay Court in *Vithal Janardan v. Vithojirav Putlajirav* (4), and by this Court in *Kishan Singh's* case (2).

The question in those cases was whether an application for a certificate made by a purchaser at an auction-sale to the Court ordering the sale was governed by art. 178, and it was held not to be so. The principle on which the Courts proceeded would appear to be equally applicable to the case of an application for amendment of a decree under s. 206 of the Civil Procedure Code, because it is the bounden duty of a Court to see that its decrees are in accordance with the judgments, and to correct them if necessary.

Under any circumstances, however, whatever may be the effect of art. 178 of the Limitation Act upon the petitioner's application, I consider that, as the matter has come to the notice of the Court, the Court is bound of its own motion to bring the decree into conformity with the judgment. (5)

There is no sufficient reason in this case for not doing so with reference to the time that has expired since the decree was passed.

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

(2) Weekly Notes, 1883, p. 262.

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

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

(5) See *Shivapa v. Shivpanch Lingapa*, I. L. R., 11 Bom. 284.—*Rev.*

1887

DARBO
v.
KESHO RAI.

For the decree is not barred by limitation, and it has been explained that although the decree-holder has by amicable arrangement obtained possession of most of the property he is entitled to, he is still kept out of a part, owing to the judgment-debtor's insisting on the terms of the decree.

The decree will be amended so as to make it a decree for establishment of possession in respect of the house, and for recovery of possession of the other immoveable property mentioned in the plaint.

I make no order as to costs.

Application granted.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Oldfield.

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RAM DAS CHAKARBATI (DEFENDANT) v. THE OFFICIAL LIQUIDATOR OF THE COTTON GINNING COMPANY, LIMITED, CAWNPORE.*

Close holiday—Proceeding on civil side of District Court during vacation—Act VI of 1871 (Bengal Civil Courts Act), s. 17—Jurisdiction—Irregularity—Consent of parties—Waiver—Company—Winding up—Contributories—Shareholders—Notice of allotment—Secondary evidence of notice—Press-copy letter—Evidence of original letter having been properly addressed and posted—Act I of 1872 (Evidence Act) ss. 16, 114—Act IX of 1872 (Contract Act) ss. 3, 4—Register of members—Presumption of membership—Act VI of 1882 (Indian Companies Act) ss. 45, 47, 60, 61, sch. 1, Table A (97)—Appeal—Fresh evidence—Civil Procedure Code, s. 568.

§. 17 of the Bengal Civil Courts Act (VI of 1871) was framed in the interests of the Judges and officials of the Courts, and probably also in the interests of the pleaders, suitors and witnesses, whose religious observances might interfere with their attendance in Court on particular days. On a close holiday, a Judge might properly decline to proceed with any inquiry, trial, or other matter on the civil side of his Court; and any party to any judicial proceeding could successfully object to any such inquiry being proceeded with, and, in the event of any such inquiry having been proceeded with in his absence and without his consent, would be entitled to have the proceeding set aside as irregular, probably in any event, and certainly if his interests had been prejudiced by such irregularity. But, at the furthest, the entertaining and deciding upon a matter within the ordinary jurisdiction of the Court on a close holiday, is an irregularity the right to which can be waived by the conduct of the parties; and a party who, on a close holiday, does attend, and without protest takes part in a judicial proceeding, cannot afterwards successfully dispute the jurisdiction of the Judge to hear and determine such

* First appeal No. 181 of 1886, from an order of W. Blennerhasset, Esq., District Judge of Cawnpore, dated the 4th October, 1886.