

of his judgment was one which occupied us for some time. I have no doubt that the suit is not barred by limitation. But the fact of the plaintiffs' having delivered the mortgage-deed to the mortgagees, notwithstanding their clear perception that after having done so further payments from the mortgagees were not likely to be made, and the fact that only a few days previously the plaintiffs had stated before the registering officer that they would retain the mortgage-deed till they had received the balance of the consideration-money, and further, the fact that the plaintiffs themselves in the mutation department clearly acknowledged the receipt of the balance of the consideration-money, leave in my mind no doubt whatever that the plaintiffs cannot now come into Court and set up an allegation of the non-receipt of the consideration-money. It would be impossible for Courts of Justice to come to any definite conclusions if conduct so unequivocal and admissions so distinct are to be treated as wholly meaningless. For these reasons I concur with my brother Mahmood, and would dismiss the plaintiffs' suit and decree the appeal with costs.

1890  


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 NAUBAT  
 SINGH  
 v.  
 INDAR SINGH

*Appeal decreed.*

*Before Mr. Justice Young.*

BANSI (JUDGMENT-DEBTOR) v. SIKREE MAL (DECREE-HOLDER.) \*

1890  
 November 4.

*Execution of decree—Step in aid of execution—Application by decree-holder for leave to bid at sale—Act XV of 1877 (Limitation Act) sch. II, No. 179, cl. (4).*

The making of an application by the decree-holder for leave to bid at the sale in execution of his decree is "a step in aid of execution" within the meaning of cl. (4), No. 179, sch. ii of the Limitation Act (Act XV of 1877).

THE facts of this case sufficiently appear from the judgment of Young, J.

Munshi *Madho Prasad*, for the appellant.

The respondent was not represented.

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\* Second Appeal No. 362 from an order of A. Sells, Esq., District Judge of Meerut, dated the 14th December 1889, confirming the order of Munshi Jafar Hussain, Munsif of Meerut, dated the 22nd of March 1889.

1890  
 BANSI  
 v.  
 SIKREH MAL.

YOUNG, J.—This is a second appeal against the order of the District Judge of Meerut, dated the 14th December 1889, dismissing the appeal of Bansi, judgment-debtor, appellant, from the decree of the Munsif of Meerut, dated the 22nd March 1889. The judgment-debtor had objected to his creditor's taking out execution of the decree, dated the 20th July 1880, and the ground taken was that more than the legal period had expired between the date of the present application for execution and the last legal occasion of such execution. It appears that the first application for execution was made on the 13th April 1881, while the second application was dated the 17th February 1885, a period therefore of nearly four years from the first application for execution. It is alleged that the second application, that is, the one in 1885, was time-barred and therefore such proceedings could in no wise form a legal starting point for the computation of a new period of limitation. It is alleged that the third application for execution which took place on the 12th May 1886, was therefore time-barred and invalid, and could not suffice to keep alive a decree already dead; and that consequently the application of the 3rd June 1889 was time-barred. These objections were disallowed by the Munsif and the learned District Judge concurs with him in that opinion. The learned Judge says:—

“In this case execution of decree was first applied for in April 1881, and proceedings continued till towards the end of 1882. On the 17th February 1885, another application was made, notice issued, and attachment followed, but no objection was raised on the plea of limitation, and this being so I do not consider that it can now be raised at the time of this *third* period of execution proceedings.” [I may observe parenthetically that the learned Judge should have said, at the time of this *fourth* period of execution proceedings.] The learned Judge continues:—“Apart from this, it is shown that on the 18th March 1882, the time of sale drawing near, the decree-holder applied for permission to bid and this was allowed, and this must, it seems to me, be considered to be a step taken in aid of execution, and in my opinion therefore the plea of limitation even would not avail.”

Against this contention Mr. *Madho Prasad* quoted *Toree Mahomed v. Mahomed Mabood Bux* (1) where it was held that "the mere payment of a court-fee in connection with execution-proceedings with a view to obtain leave to bid for property then up for sale in execution of a decree does not constitute 'the taking of some step in aid of execution' within the meaning of No. 179, sch. ii. of the Limitation Act (XV of 1877)."

I observe that in that case the act alleged to be in furtherance of the execution was the mere payment of a fee of Rs. 2. In the present instance it seems that the decree-holder did more. He applied to the Court for permission to bid, and, with all respect to the Calcutta Court, I am unable to see how such proceeding is other than taking a step in aid of execution of decree.

Mr. *Madho Prasad* further urged upon my notice that the proceedings taken by the decree-holder in the year 1885 were very faulty, in fact, the learned counsel stigmatized them as fraudulent. He urged that no proper notice was given to the judgment-debtor, who was in jail at the time, and was not served with notice (as he alleges) until after the expiry of the time for making objections. Be that as it may, it does not appear to me that a Court can rip up the past proceedings of other Courts and determine, for the purposes of deciding of limitation in subsequent execution proceedings, whether those past proceedings were properly conducted or not. No doubt the words of the law, No 179, clause (4), do show that the application, the date of which is to be the starting point for a new period of limitation, must be an application in accordance with law to the proper Court, but I take it that it does not empower Courts in subsequent applications for execution to discuss the propriety and legality of the action of previous Courts in previous execution-proceedings, but merely denotes that the application which is to form the starting point for a new period of limitation is to be an application not made out of Court, but made in Court, according to the general law for execution of decrees, and provided such application falls generally under the provisions

(1) I. L. R., 9 Calc. 730.

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of the law, the regularity of the procedure of former Courts is a matter beyond the cognizance of a subsequent Court of execution. As to the chief objection taken by Mr. *Madho Prasad*, namely, that nearly four years had elapsed between the date of the first and the second applications for execution, I am of opinion that the Judge assigns good reasons for believing that the second application was not time-barred, and, this being so, I have merely expressed my opinion that the lower appellate Court has come to a right conclusion in affirming the decree of the Court of first instance. The appeal is dismissed. Respondent not appearing, no order as to costs.

*Appeal dismissed.*

1891

January 31.

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Straight.*

BHAGWANI AND ANOTHER (PETITIONERS) v. MANNI LAL AND ANOTHER  
(OPPOSITE PARTIES).\*

*Act VII of 1889 (Succession Certificate Act), ss. 9 and 19—Order granting certificate conditioned on the filing of security—Appeal.*

Where on an application for a certificate of succession under the Succession Certificate Act (Act VII of 1889) an order was made granting the certificate conditionally on the applicants' furnishing security.

*Held* that this was not an order "granting, refusing or revoking a certificate" within the meaning of s. 19 of the Act, and that therefore no appeal would lie therefrom.

THE question decided in this appeal originally came in first appeal before Mahmood, J., † and was by him decided on grounds similar to those on which the judgment of the Court in the present appeal is based. The facts of the case sufficiently appear from the judgment of Mahmood, J., which is as follows:—

MAHMOOD, J.—Upon this appeal being called on for hearing, Pandit *Sundar Lal*, holding Mr. *Ram Prasad's* brief for the respondent, has taken a preliminary objection, to the effect that the appeal is premature, as no such order as that contemplated by s. 19 of the Succession Certificate Act (VII of 1889) has yet been made in

\* Appeal No. 47 of 1890, under s. 10 of the Letters Patent.

† First Appeal No. 46 of 1890 from an order of H. T. D. Pennington, Esq., District Judge of Ghazipur, dated the 21st March 1890.