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HARGU LAL
SINGH
v.
MUHAMMAD
RAZA KHAN.

view. It must be remembered that we are dealing with parties as plaintiffs, who had no share in the litigation under which the attachment was put upon the interests of the judgment-debtors in that matter. They are third parties wholly outside that litigation, who obtained a clean title upon the 1st December 1885, unless the attachment of 11th May 1884, can be maintained. I think that they are entitled to put the defendant upon strict proof that the attachment under which the sale to him took place was a good attachment in law, and that there was no such misdescription in it of the interests of the judgment-debtors as would mislead either purchasers at the auction to bid or persons interested in the property to refrain from coming forward and making any claim. For these reasons I think that the Subordinate Judge was right. I dismiss the appeal with costs.

TYRRELL, J.—I concur.

Appeal dismissed.

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December 18.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

KALLU RAI AND OTHERS (JUDGMENT-DEBTORS) v. FAHIMAN AND OTHERS
(DECREE-HOLDERS).*

Civil Procedure Code, s. 206—Application to bring decree into conformity with the judgment—Execution of decree—Limitation—Act XV of 1877, sch. ii, art. 179 (4)—“Step in aid of execution.”

The granting of an application under s. 206 of the Civil Procedure Code to bring a decree into conformity with the judgment does not form the starting point of a fresh period of limitation in favour of the decree-holder; nor is such an application a “step in aid of execution” within the meaning of art. 179, schedule ii, of the Limitation Act (XV of 1877).

Kishen Sahai v. The Collector of Allahabad (1) distinguished.

THE facts of this case are sufficiently stated in the judgment of Straight, J.

Munshi Madho Prasad, for the appellants.

Mr. *Abdul Raof* and Mr. *Abdul Majid*, for the respondents.

* First Appeal No. 33 of 1889 from an order of Babu Lalla Prasad, Subordinate Judge of Ghazipur, dated the 26th November 1888.

STRAIGHT, J.—This appeal must prevail. On the 29th September 1883, a money decree was passed by the Court of the Subordinate Judge of Gházipur in favour of the decree-holders, respondents. On the 28th June 1884, in consequence of there being some arithmetical defect in the decree, an application was made by the decree-holders to the Court which passed it under s. 206 of the Code of Civil Procedure for amendment of the decree. It is to be observed that an application under s. 206 contemplates that the judgment is correct, but the decree is not in conformity with, but is at variance with, the judgment. In the present case the decree was amended in the way prayed for by the Subordinate Judge on the 25th November 1885. The first application for the execution of the decree was made on the 5th November 1886. It was contended before the Subordinate Judge below, and it is contended here, that the execution of the decree of the 29th September 1883, was barred by limitation, because the first application for execution of the 5th November 1886, was made more than three years after the date of the decree. It was answered by the decree-holder that he is entitled to treat the order amending the decree of 25th November 1885, as giving him a new period of limitation and a fresh starting point; and that this view has been adopted by the learned Subordinate Judge upon the authority of *Kishen Sahai v. The Collector of Allahabad* (1). The judgment-debtor appeals to this Court, and his contention is, first, that the case is inapplicable, but that, if it is applicable, it is unsound, and the decree-holder is not entitled to calculate the period of execution of decree from the 25th November 1885. With regard to the case of *Kishen Sahai v. The Collector of Allahabad* (1) I have looked into the facts as set out in the report and I find that the passage where Mr. Justice Oldfield in delivering the judgment remarks “the proceedings under this application were substantially of the nature of a review of judgment” probably had reference to the peculiar circumstances of a very peculiar case, in which the proceedings ostensibly under s. 206 of the Code of Civil Procedure were of such a character as that they could only properly have been dealt with by review of judgment. I therefore do not

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think that the authority of *Kishen Sahai v. The Collector of Allahabad* (1) stands at all in my way in allowing this appeal. The application for amendment, which was made by the decree-holders in the case on the 28th June 1884, was an application for amendment of decree pure and simple, and all that was asked for was to make a correction in it in a statement of certain figures, so as to make it a decree corresponding with the directions as to costs given in the judgment. It was suggested that we should regard the proceedings under s. 206 as amounting to a step in aid of execution, namely, under para. IV of art. 179, sch. II of the Limitation Act. I cannot take this view. The Court which has to deal with applications under s. 206 of the Code of Civil Procedure is the Court which passed the decree, and not the Court which is executing the decree. Furthermore it may be said in this case, that no application for execution of the decree has ever been made, and therefore no foundation has been laid for an application to take some step in aid of execution, that is to say, in furtherance of the execution of decree. I think that the application of the 5th November 1886, was barred by limitation, and for these reasons I allow the appeal, reverse the decree of the lower Court and hold that the decree of the 29th September 1883, was time-barred and cannot be executed.

TYRRELL, J.—I entirely agree.

Appeal allowed.

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May 7.

Before Mr. Justice Straight and Mr. Justice Mahmood.

BINDA (PLAINTIFF) v. KAUNSILIA AND ANOTHER (DEFENDANTS)*

Hindu Law—Suit for restitution of conjugal rights—Desertion—Cruelty—Limitation—Act XV of 1877 (Limitation Act) s. 23, sch. ii., Nos. 34, 35, and 120.

The texts of the Hindu law relating to conjugal cohabitation and imposing restrictions upon the liberty of the wife, and placing her under the control of her husband, are not merely moral precepts, but rules of law. The rights and duties which they create may be enforced by either party against the other and not exclu-

* Second appeal No. 1194 of 1887, from a decree of Babu Promoda Charn Banerji, Judge of the Court of Small Causes (exercising the powers of a Subordinate Judge) of Allahabad, dated the 3rd May 1887, reversing a decree of Babu Ganga Prasad, Munsif of Allahabad, dated the 25th February 1889.

(1). I. L. R., 4 All., 137.