

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

ABDUL MAJID (DECREE-HOLDER) v. MUHAMMAD FAIZULLAH AND ANOTHER  
(JUDGMENT-DEBTORS).\*

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June 4.

*Execution of decree—Act XV of 1877 (Limitation Act), sch. ii, art. 179 (4)—“Step in aid of execution”—Application by transferee of decree for sale of hypothecated property—Non-registration of deed of assignment—Civil Procedure Code, s. 232—Act III of 1877 (Registration Act), ss. 3, 17, 47, 49—Effect of subsequent registration.*

On the 13th November 1886, the assignee of a decree for sale of hypothecated property applied, under s. 232 of the Civil Procedure Code, for execution of the decree, but, objection being raised, that the deed of assignment had not been registered, subsequently applied for the return of the deed that it might be registered, and it was returned accordingly. The deed was afterwards duly registered. The next application for execution of the decree was made on the 25th April 1888.

*Held* (i) that the deed of assignment was not a document which comprised immoveable property within the meaning of s. 49 of the Registration Act (III of 1877), a decree for sale not being immoveable property as defined in s. 3 ;

(ii) that consequently, although the assignee might not, under the latter portion of s. 49, use the deed for the purpose of proving his title, there was no provision in the Act saying that he should not take title under the deed ;

(iii) that the position of the assignee when he made his application on the 13th November 1886 was that he was unable to prove that there was a title by assignment in himself ;

(iv) that the subsequent registration cured the absence of registration on the 13th November 1886, and, under s. 47 of the Registration Act, the document thereupon had full effect, and related back to its execution ;

(v) that the application of the 13th November 1886 was a step in aid of execution of the decree within the meaning of art. 179 (4) of sch. ii of the Limitation Act (XV of 1877), and that the application of the 25th April 1888, was within time.

THE facts of this case appear from the judgment of the Court.

Babu Jogindro Nath Chaudhri, for the appellant.

Munshi Madho Prasad and Babu Rajendro Nath, for the respondents.

EDGE, C.J., and BRODHURST, J.—This appeal arose out of proceedings in execution. The question here is, whether an application

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\* Second Appeal No. 1136 of 1889 from a decree of A. M. Markham, Esq. District Judge of Aligarh, dated 2nd August 1889, confirming a decree of Babu Sheo Sahai, Munsif of Kasganj, dated the 15th March 1889.

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which was made on the 25th April 1888, was made within time having regard to art. 179, sch. ii of the Limitation Act. That application was made by an assignee of a decree-holder, to whom the original decree-holder had assigned the decree and all benefits arising thereunder. That assignment was made on the 16th September 1886, and on 13th November 1886, the assignee, appellant here, applied under s. 232 of the Code of Civil Procedure to have his name substituted and for execution. Notices were issued, and on the 30th November 1886, the original decree-holder appeared and admitted that he had assigned the decree to Abdul Majid, the assignee. On the 10th January 1887, the judgment-debtor raised objections on the ground that the deed of assignment had not been registered, and on the 11th February 1887, Abdul Majid, the assignee, through his vakil, applied to the Court for an adjournment of his application, that it might stand over for a fortnight, and that the deed of assignment which was on the file might be returned to him in order that it might be registered. On the same day the Munsif ordered the deed to be returned, and passed an order to the effect that the case may be struck off for the present. The deed of Abdul Majid was duly registered after it had been returned by the Munsif. Now, if the application of the 13th November 1886, was a step in aid of execution or can be treated as such, the present application of the 25th April 1888 has been made within time. Mr. *Rajendro Nath*, for the respondents, here judgment-debtors, has contended that Abdul Majid had no title on the 13th November 1886, as assignee, and that the application which was made on that day could not be treated as made by an assignee of the decree-holder, and, as it was not by the original decree-holder himself, he contends there was no step in aid of execution on the 13th November 1886, within the meaning of art. 179, sch. ii of the Limitation Act. He has cited several authorities. Those authorities are as follow, *Gopal Narayan v. Trimbak Sudashiv* (1), *Koob-Lal Chowdhry v. Nityanand Singh* (2), *Ufatunnisa v. Hosain Khan* (3), *Raju Balu v. Krishnarav Ram Chandra* (4), *Mattongeney Dossee*

(1) I. L. R., 1 Bom. 267.

(2) I. L. R., 9 Calc. 839.

(3) I. L. R., 9 Calc. 520.

(4) I. L. R., 2 Bom. 273

v. *Ram Narayan Sadkhan* (1), *Martin v. Sheo Ram Lal* (2). It appears to us that those authorities are wide of the question we have got to decide here. Those authorities show that a document which must be registered under the Registration Act cannot, until it is registered, be given in evidence so as to affect immoveable property. Being carefully looked at, those authorities appear to decide no more. Now it appears to us that in order to support Mr. *Rajendra Nath's* contention, that is that the assignee on the 13th November 1886, had no title in fact as assignee, it would be necessary to hold that this deed of assignment was a document which comprised immoveable property. If it did comprise immoveable property, there is no doubt that being unregistered on the 13th November 1886, it came within the earlier part of s. 49 of the Registration Act which says "No document required by s. 17 to be registered shall affect immoveable property comprised therein." What was comprised in the document in question was an assignment of a decree which had been passed on an hypothecation bond, which decree could have been enforced by bringing an immoveable property which was comprised in the bond to sale. It would in our opinion be straining the language to hold that a decree for sale on a hypothecation bond was immoveable property; certainly it would not appear to be immoveable property as immoveable property is defined in s. 3 of the Registration Act. If this document was not a document which comprised immoveable property within the meaning of s. 49 of the Registration Act, we cannot see any provision in that Act which says that the assignee should not take title under it. It is quite another question whether he could use it for the purpose of proving his title. The distinction may appear a fine one, but we must remember that the Registration Act prescribes a penalty for non-registration and cuts down the free action of the parties; therefore we ought not to construe it so as to cut down the action of the parties further than the wording of the Act compels us to do. The provision in the latter portion of s. 49, namely, that a document such as this which requires to be registered under s. 17 shall not

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(1) I. L. R., 4 Cal. 83.

(2) I. L. R., 4 All. 232.

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be received as evidence of a transaction affecting immovable property, appears to us to apply. In effect the object which the Legislature had in view in passing the Act was to make registration a condition precedent in a case like this, not to the existence of the title in an assignee, but to the proof that such title existed. In our opinion the document having been subsequently duly registered, it had full effect and related back to its execution: that appears to be the effect of s. 47, and the mere fact that it was not registered on the 13th November 1886, was cured by the subsequent registration. As we regard the position of the parties it was this; the assignee in fact of the decree when he made his application on the 13th November 1886, was unable to prove that there was a title by assignment in himself. It was a case of failure of evidence, and we consider that the application he made on the 11th February 1887, was a reasonable one, and was not an application in any sense to withdraw his application of the 13th November 1886. We think that the Munsif on the 11th February 1887, did not treat Abdul Majid's application of that date an application to withdraw. The fair meaning of his order was that the case might stand over for the present, and not that he dismissed the application. In the case of *Ganpat Pandurang v. Adarji Dadabhai* (1) an adjournment was allowed to a party to obtain registration of a deed under which that party claimed. In conclusion we are of opinion that the application of the 13th November 1886, was a step in aid of execution, and that the application of 25th April 1888 was within time. The decrees in the Court below will be set aside, and the case will be remanded to the first Court, which will reinstate the application of the 25th April 1888, and proceed to dispose of it according to law. The appellant here will have the costs here and hitherto below.

*Case remanded.*

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(1) I. L. R., 3 Bom. 312.