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adduced before us of the benami system having been carried so far, and though it may be too late for this Court to abolish that pernicious system to the extent to which it is established, it is highly desirable not to introduce it where it is as yet unknown."

"It is hardly necessary to observe that the case before us stands quite apart from those cases where a third person who is not on the record at all, comes in to show that a suit was carried on really for his benefit. It also stands apart from those cases where a person on the record seeks to show that a suit was carried on really against a person who was not a party to the suit. This, though a highly inconvenient practice, has been very frequently allowed, and to such cases the present decision does not apply."

"Nor need we consider in this case the reasons why a person, against whom an adverse decree has been obtained, is allowed in some cases to show cause why the decree should not be executed. No such question arises here."

The last paragraph quoted above shows that the case cited does not decide, one way or the other, the question that is now before us.

We are of opinion that the ground taken before us is not valid. The appeal will be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Macpherson.

HURRY CHARAN BOSE (DECREE-HOLDER) *v.* SUBAYDAR SHEIKH (JUDGMENT-DEBTOR.)*

1885 *July* 30.

Execution of decree—Limitation—Application for execution of decree for arrears of rent—Proper application—Civil Procedure Code (Act XIV of 1882), ss. 235, 237, 245.

Within the period of three years from the date of a decree for arrears of rent under Rs. 500, the judgment-debtor applied for execution of his decree without giving a list of the properties which he sought to attach, but stating that a list was filed with a previous application, and praying that that application might be put up with the present one. Subsequently upon an order made by the Court a fresh list was filed after the period of a year had elapsed.

* Appeal from Appellate Order No. 58 of 1885, against the decree of T. M. Kirkwood, Esq., Judge of Zillah Moorshedabad, dated the 16th of December 1884, reversing the order of Baboo Triguna Prasanna Bose, Munsiff of Lalbagh, dated the 5th of September 1884.

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Held, that though the application was not in strict accordance with the provisions of s. 237 of the Civil Procedure Code, it was still an application under s. 235, and that execution of the decree was not barred, but that it must be limited to the property specified in the previous application.

Syud Mahomed v. *Syud Abedoollah* (1) followed.

THIS appeal arose out of an application to execute a decree dated the 14th June 1881, for arrears of rent below Rs. 500. The application was filed on the 14th June 1884 and it contained the following statement at the foot: "This decree having been executed in No. 30 of 1884, I was substituted for the decree-holder, and after notice to the judgment-debtor the execution proceedings were struck off. I pray that that record may be placed with this application, and that the immoveable property stated in that record may be attached and sold and my money may be thus realized. So much as may not be so realized by such sale, then Subaydar should be arrested and the moveables in his possession should be attached and sold." With that application no list of the properties sought to be attached was given.

Upon that petition an order was passed by the Munsiff on the 18th June as follows: "The decree-holder to show good and sufficient grounds within a week for restoration of case to the file;" and on the 28th June the decree-holder filed an affidavit in support of his application. On the 12th July an order was passed that the application to execute be registered, and that the decree-holder should file a list of property before the 26th July. On the 28th July, the 26th being a holiday, the decree-holder again applied to the Munsiff, and he was allowed time till the 12th August, within which to file a list of the property he sought to have attached. On the 9th the list was filed, and on the 16th the objections against execution being allowed were argued, the judgment-debtor contending that the decree was barred by limitation.

The Munsiff held that the filing of the list on the 9th of August was nothing more than a step taken in furtherance of the application for execution which was within time. That Court relied on the case of *Golokemoney Dabia* v. *Mohesh*

(1) 12 C. L. R., 279.

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Chunder Mosa (1) and distinguished the case of *Sreenath Goohoo* v. *Yusoof Khan* (2), which had been cited by the judgment-debtor in support of his contention that the decree was barred. The Munsiff accordingly overruled the objections and granted the application. Upon appeal that order was reversed by the District Judge, who held that the application of the 14th June 1884 was radically defective and informal, and could not therefore be treated as an application at all within the meaning of s. 237 of the Civil Procedure Code, and that it did not become a proper application till the 9th August when it was undoubtedly barred. The District Judge considered that the Court had no power to allow amendment of a radically imperfect application unless such amendment was made within the period allowed by limitation. He accordingly reversed the Munsiff's order and disallowed the judgment-creditor's application.

The latter now appealed to the High Court.

Baboo *Kashi Kant Sein*, for the appellant.

Baboo *Kally Kissen Sein*, for the respondent.

The judgment of the High Court (MITTER and MACPHERSON, JJ.) was as follows:—

The question which we have to determine in this case is whether the decree dated the 14th June 1881 is barred by limitation. It is a decree passed under the Rent Act, and the amount decreed is less than Rs. 500, and therefore the special limitation laid down under s. 58 of that Act will apply to this case. Now the provisions of the corresponding section of Act X of 1859 were considered in a Full Bench decision in the case of *Rhidoy Krishna Ghose* v. *Kailas Chandra Bose* (3). According to that decision the decree-holder would be in time if he makes the application for the issue of process of execution within three years from the date of the decree. In this case on the 14th June 1884, that is within three years from the date of the decree, an application for execution was filed. At foot of that application it was stated that this decree having been executed in No. 30 of 1884, the petitioner was substituted for the original decree-

(1) I. L. R., 3 Calc., 547. (2) I. L. R., 7 Calc., 556.
(3) 4 B. L. R., F. B., 82.

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holder and after notice to the judgment-debtors the execution proceedings were struck off. Appellant prayed that that record might be placed with this application, and that the moveable property stated in that record might be attached and sold, and the money due under the decree realized.

For the realization of so much of the decree as was not satisfied he prayed that the judgment-debtor might be arrested, and the moveable property in his possession attached and sold.

This application was ordered to be registered on the 12th July following, but it appearing that there was no proper specification at foot of the application of the properties to be attached as required by s. 237, the Munsiff allowed this defect to be remedied by an amendment which was made on the 9th August following, and a list containing a specification of the properties sought to be attached having been filed before the Munsiff, he directed that the amendment be made, but the judgment-debtor contended before the Munsiff that at the time when the amendment was ordered to be made the decree was barred by limitation.

The Munsiff overruled this objection.

On appeal the District Judge has reversed the judgment of the Munsiff. He is of opinion that the original petition of the 14th June 1884 not being in accordance with the provisions of s. 237, was no application at all, and that the Court had no power to allow the amendment on the 9th of August as the decree had been barred by limitation before that date. Upon these two grounds the District Judge has reversed the Munsiff's decision.

We are of opinion that upon both these points the decision of the District Judge is not correct. The petition of the 14th June, no doubt, was not in strict accordance with the provisions of s. 237. It did not give a sufficient description of the property of the judgment-debtor as required by s. 237; but at the same time it did state that a specification of the property sought to be attached existed in the previous execution case No. 30 of 1884. No doubt that was a defect, because it was not a strict compliance with the provisions of s. 237; but merely because there was this defect it does not follow that it was not an application at all under s. 235. In this view we are supported by the

decision of this Court in *Syud Mahomed* v. *Syud Abedoollah* (1). That decision also is an authority for the proposition that the Court has power to allow an amendment under s. 245, although it may be that at the time when the amendment is allowed the decree is barred by limitation.

Upon both these points the decision cited above is an authority in favor of the contention of the appellant. We, therefore, set aside the judgment of the lower Appellate Court and restore that of the Munsiff with costs.

When the case goes back the Munsiff will take care that execution does not issue against any property not mentioned in the petition of the previous execution case No. 30 of 1884.

Appeal allowed.

Before Mr. Justice Norris and Mr. Justice Ghose.

KISHORI MOHUN GHOSE (PLAINTIFF) *v.* MONI MOHUN GHOSE AND OTHERS (DEFENDANTS.) *

1885 *August* 12.

Hindu Law—Partition by sons—Widow's Share—Will, Construction of.

On partition of the joint family property by the sons after their father's death, the widow is entitled to get a share equal to that of each of the sons, and, if she has received any property either by gift or legacy from the father, she is entitled to so much only as with what she has already received would make her share equal to that of each of the son's.

Jodoonath Dey Sircar v. *Brjonath Dey Sircar* (2) followed.

Where a Hindu by his will, after bequeathing a legacy to his widow of Rs. 1,000 and appointing her executrix along with other executors, directed that his executors should divide the estate amongst his sons in accordance with the *shastras* after his youngest son had attained majority :

Held, that such direction did not amount to an absolute bequest to his sons so as to exclude the widow from being entitled to a share upon a partition between the sons.

ONE Ramdhon Ghose died on the 7th June 1857 leaving him surviving four sons, namely Kishori Mohun Ghose the plaintiff, and Khetra Mohun Ghose, Moni Mohun Ghose and Romoni

* Appeal from Appellate Decree No. 1405 of 1884, against the decree of J. Whitmore, Esq., Judge of Zilla 24-Pergunnahs, dated the 5th of May 1884, affirming the decree of Baboo Nuffer Chandra Bhatta, First Subordinate Judge of that district, dated the 30th of January 1883.

(1) 12 C. L. R., 279. (2) 12 B. L. R., 385.

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