1893
April 14th.

Before Mr. Justice Burkitt.

TILESHAR RAI AND OTHERS (DECREE-HOLDERS) v. PARBATI AND OTHERS (JUDGMENT-DEBTORS).*

Civil Procedure Code. s. 230—Execution of decree—"Application to execute a decree"—Limitation.

The term "application to execute a decree" in the third paragraph of s. 230 of the Code of Civil Procedure means any application to execute a decree. It is not confined to the last application preceding the expiry of the period of twelve years from either of the points of time mentioned in cl. (*a*) or cl. (*b*) of the same paragraph of the section abovementioned. *Paraga Kuar* v. *Bhagwan Din* (1) distinguished. *Ramadhar* v. *Ram Dayal* (2) referred to.

The facts of this case are fully stated in the judgment of Burkitt, J.

Munshi *Govind Prasad*, for the appellants.

Babu *Bishnu Chandar Motra*, for the respondents.

BURKITT, J.—This is an appeal against an order of the Subordinate Judge of Gházipur affirming an order of the Munsif of Saidpur by which the appellants', decree-holders', application for execution of a decree was rejected as time-barred. The date of the decree is the 25th of June 1877. It therefore was more than twelve years old at the date of the application which I am now considering, that application having been presented on the 15th of April 1890, while the sum decreed was payable on the 20th of November 1877. But it is contended for the appellants that because the application for execution which immediately preceded that of the 15th of April 1890, was not "granted," they are still, despite the twelve years' rule contained in s. 230 of the Code of Civil Procedure, entitled to have satisfaction of their decree by process of execution; and in order to meet the facts of this case the learned vakil who represents the appellants further contends that if the application for execution which immediately preceded the application made after the expiration of the twelve years had not been "granted," it was immaterial

* Second appeal No. 664 of 1891 from a decree of Pandit Bansidhar, Subordinate Judge of Gházipur, dated the 23rd April 1891, confirming a decree of Babu Chandi Prasad, Munsif of Saidpur, dated the 13th December 1890.

(1) I. L. R. 8 All. 301. (2) I. L. R. 8 All. 536

that another previous application for execution of the same decree had been granted during the twelve years. In fact the learned vakil's argument amounts to this, that in the third sentence of s. 230 of the Code of Civil Procedure, the words "where an application," instead of being construed according to their ordinary grammatical meaning as applying to any application made and granted, should be interpreted to mean "where the last application prior to an application made after the expiration of twelve years" has been granted.

Before discussing the force of this argument it will be useful to set forth some of the previous applications made for the execution of this decree. The earliest application to which I need allude is the fourth. It was made on the 24th of May 1885. Notice under s. 248 was served on the judgment-debtors, but as the decree-holders failed to deposit the fees for attaching the property against which they sought execution the application was "struck off" in June 1885. The fifth application was made on the 8th of August 1885. In the course of proceedings on this application the judgment-debtors' property was attached and as that property was ancestral the execution case was, on the 3rd of February 1886, transferred to the Collector under the provisions of s. 320 of the Code of Civil Procedure. There is nothing on the record to show what happened before the Collector. The sixth application for execution was made on the 14th of November 1887. Notice was served on the judgment-debtors, who came in and took certain objections to the execution. No order was passed on those objections, because, on the 23rd of April 1888, the decree-holders withdrew their application and asked that it might be struck out, intimating their intention of making a further application at some future date.

This is the last application which was made within the twelve years from the date when the money due under the decree was payable. The seventh and last application for execution was made on the 15th of April 1890. It is the application now before me. In it the usual notice having been issued to the judgment-debtors they appeared, and, *inter alia*, objected that the execution was time-barred.

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A date was fixed for hearing the objection, and, strange to say, that date was a Sunday. The judgment-debtors being absent on the following day (the 4th of August 1890) their objection was struck out in default and subsequently an order was passed directing the case to be sent to the Collector under s. 320. Shortly afterwards the judgment-debtors again came in and reiterated their objections. The question was then taken up by the Court, which eventually coming to the conclusion that execution was barred by the twelve years' rule contained in s. 230 of the Code of Civil Procedure rejected the application for execution. That order was upheld on appeal by the Subordinate Judge, and it is from that appellate order that this appeal is brought.

The contention then put forward on behalf of the appellants is that inasmuch as the sixth application for execution was not granted, they are now entitled to have out execution on the seventh application. Their learned vakil based his contention on the judgment of this Court in the case of *Paraga Kuar* v. *Bhagwan Din* (1). Now accepting fully the definition of the word "granted" as laid down in that case, I hold with the learned vakil that the sixth application was not "granted." But I must also hold that the fifth application, that of the 8th of August 1885, was granted. The Court did much more on it than merely issue a notice. It attached the property against which execution was sought, and then, finding that that property came under the definition of "ancestral property," it transferred the further proceedings in execution to the Collector as it was bound by law to do. In fact the Court took every step within its lawful power to further the execution of the decree, and when the limits of its own jurisdiction were reached it transferred the further proceedings to a tribunal empowered by law to continue them. Under such circumstances I cannot but hold that this fifth application was "granted" within the meaning of s. 230 of the Code of Civil Procedure.

Now the third sentence of s. 230 of Act No. XIV of 1882 provides that "where an application to execute a decree * * *

(1) I. L. R., 8 All. 301.

has been made under this section and granted, no subsequent application to execute the same decree shall be granted after the expiration of twelve years from * * * * * * * * the date of the default in making the payment in respect of which the applicant seeks to enforce the decree."

Primâ facie, therefore, as it appears that at least one application for execution of this decree had been granted, no subsequent application to execute the same decree should be granted after the expiration of twelve years from the date on which the decretal amount was payable, *i. e.*, the 20th of November 1877.

But it is contended that I should disregard the fifth application altogether as immaterial, and that the only application which can be taken into consideration is the sixth, because it was the application immediately preceding the application made after the expiration of twelve years from the 20th of November 1877.

The case cited, *Paraga Kuar* v. *Bhagwan Din* (1), undoubtedly at first sight appears to lend some support to this contention. But on a close examination of the facts of that case and of the judgment of the learned Officiating Chief Justice, who delivered the judgment of the Court, I am of opinion that it does not support the construction which the learned vakil would have me put on it. The decree in that case was made in August 1865. It was an instalment decree providing for periodical payments over a period of sixteen years from 1866 to 1882. The twelfth year from the date fixed for the payment of the last instalment would be the year 1894. Up to 1877 several payments had been made apparently without issue of process of execution. In March of that year an application for execution was made, but would appear not to have been granted (within the technical meaning of that word) as the parties came to an arrangement for liquidation of the debt which was confirmed by the Court and the case was thereupon "struck off." The next application was in March 1881. It came to an end in the same manner as the preceding application of March 1877. The Court was informed that a new arrangement for payment had been

(1) I. L. R., 8 All, 301.

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come to between the parties and that part payment had been made. Another application was made in March 1883. On it nothing was done further than the issue of notice, whereupon the Court was informed that an arrangement for payment had been made. The case was accordingly "struck off." It will be noticed that the applications of 1881 and of 1883 were made after the expiration of twelve years from the date of the decree. But the report of the case does not state what instalments were due at the date of the application of March 1877, a matter of no little importance with reference to clause *(b)* of the third sentence of s. 230 of Act No. XIV of 1882.

The last application was made in March 1884, and it was with reference to it that the judgment of this Court was delivered. In his judgment the learned Officiating Chief Justice, after premising that the only ground on which the Court was asked to interfere in appeal was that "the original decree having been more than twelve years old at the date of the two last applications for execution, it is barred by limitation," proceeded to say :—"Looking at the provisions of s. 230 of the Civil Procedure Code, it would appear that after a decree is twelve years old there is a prohibition against its being executed more than once, that is, an application should not be granted if a previous application had been allowed under the provisions of that section." The first and second clauses of the paragraph just cited somewhat conflict one with the other, but at any rate the second clause distinctly lays down that if a previous application had been allowed (which I interpret to mean *any* previous application) no subsequent application can be granted after the expiration of twelve years from the date of the decree. Then follow the words on which the argument in the case I am now considering has been founded, namely,—"Now the test to apply to this case is to see whether the last of those applications preceding the application the granting of which is the subject of appeal was granted, because, if granted, the prohibition referred to in the section, applies." I am unable, however, to consider these words as an authority for holding that the last application immediately preceding an application made after the expiration of twelve years from

the date of the decree, is "the only application to be taken into consideration," and that it is immaterial whether any previous application had been granted. That the learned Officiating Chief Justice did not himself take that view is evident from the fact that having come to the conclusion that the application of 1883 had not been "granted" he went on to consider the previous application of 1881. He found that it also had not been granted and that therefore it also was "not within the prohibition contained in s. 230." But surely, if the argument I am considering be sound, there was no necessity whatever for looking into the application of 1881. All that in that case would have been necessary was to have decided that the application of 1883 had not been granted, without going any further. The inference I draw from the learned Officiating Chief Justice's remarks about the application of 1881 is that, if in his opinion that application had been granted, he would have held that the decree was time-barred. It is (as I before remarked) important that the report does not give any information as to the date when the instalment, to recover which the application of 1877 was made, fell due. That matter does not appear to have been brought to the notice of the Court. The case of *Paraga Kuar* v. *Bhagwan Din* (1) was considered in the subsequent case of *Ramadhar* v. *Ram Dayal* (2). In that case an application had been made in November 1884, for execution of a decree passed in April 1872. In his judgment Mr. Justice Mahmood, while accepting fully the meaning of the word "granted" as laid down in *Paraga Kuar's* case, did not confine his attention to the last application immediately preceding that made in November 1884, but considered the effect of the two previous applications made in February 1883 and in December 1883, respectively. That learned Judge evidently did not believe in the existence of the rule now contended for. The point was not touched on by the other learned Judge (Mr. Justice Oldfield) who heard *Ramadhar* v. *Ram Dayal* (2). His judgment proceeded on a clause of s. 230 which has been repealed by Act No. VII of 1888.

(1) I. L. R. 8 All. 301. (2) I. L. R. 8 All. 536.

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The case of *Chengaya* v. *Appasami Ayyar* (1) has no bearing on the question under discussion. It simply gives to the word "granted" the meaning given to it in *Paraga Kuar's* case. The only other case bearing on this matter which I have been able to find is that of *Motichand* v. *Krishnarav Ganesh* (2). The judgment in it, however, proceeds on the repealed clause of s. 230 and is not in point here.

On a review of the authorities cited above I have come to the conclusion that the argument addressed to me on this point for the appellants is unsound. I hold that the words "an application to execute * * * has been made * * * * * and granted," should be interpreted according to their ordinary grammatical sense as meaning "any application," and that they should not be restricted to the last application immediately preceding an application made after the expiration of twelve years from the date of the decree sought to be enforced, or on which the sum decreed became payable.

It follows therefore that as the fifth application, that made in August 1885, was "granted" the present application made after the expiration of twelve years from the date when the decretal amount became payable cannot be allowed.

For these reasons I hold that the lower appellate Court was right in rejecting the appellants' application of the 15th of April 1890.

It was further contended for the appellants that the application of the 15th of April 1890 was but an application for revival of the proceedings under the application of August 1885. Unfortunately for the appellants the facts on this matter are against them. The application of April 1890 contained no prayer for revival of previous lapsed proceedings, but was a distinct and separate application for execution.

And lastly it was argued that the Courts below had no power to "go behind" the order of the 4th of August 1890, by which the judgment-debtors' objection to execution had been shelved in default of their appearing on a day on which they had not been summoned

(1) I. L. R., 6 Mad. 172. (2) I. L. R., 11 Bom. 524.

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to appear. In my opinion there is nothing in this contention. I would apply to it the principle recently unanimously adopted by all the Judges of this Court in the case of *Dhonkal Singh* v. *Phakkar Singh* (1), and would hold that as the Court below had not judicially decided that the judgment-debtors' objections to execution were unsound, and had simply struck them off the file of pending cases by reason of the objectors' failing to appear, that Court was quite justified (when those objections were renewed) in afterwards hearing the parties respecting them and in judicially deciding whether they were valid or not. The Court did decide that the objections were valid and that they were fatal to the applications for execution. That decision is in my opinion perfectly right. I therefore dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

1893
April 25.

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

QUEEN-EMPRESS v. MAULA BAKHSH.

Criminal Procedure Code, ss. 423, 439—*Sessions Judge, powers of as a court of appeal—Commitment.*

It is competent to a Sessions Judge acting as a Court of appeal under s. 423 of the Code of Criminal Procedure, 1882, having reversed the finding and sentence, to order the appellant to be committed for trial to the Court of Session. *Queen-Empress* v. *Sukka* (2) overruled.

This was an application on behalf of Government for revision of an order of the Sessions Judge of Meerut on appeal from an order of a first class Magistrate of the Bulandshahr district, convicting the appellant of an offence under s. 379, read with s. 511 of the Indian Penal Code, and sentencing him to six months' rigorous imprisonment. It appeared that there was reason to believe that the appellant had, when put on his trial before the Magistrate, been four times previously convicted. Only one of such convictions was proved against him, the Magistrate omitting to question him about the others. On appeal the Sessions Judge

(1) I. L. R. 15 All. 84. (2) I. L. R. 8 All. 14.