

APPELLATE CIVIL.

Before Mr. Justice Brothurst and Mr. Justice Mahmood.

KALLU AND ANOTHER (DECREE-HOLDERS) v. MUHAMMAD ABDUL
GHANI AND ANOTHER (JUDGMENT-DEBTORS)*.

Execution of decree—Act XV of 1877 (Limitation Act), sch. ii., No. 179—Application or "step in aid of execution"—Application by pleader for execution after decree-holder's death.

Where a decree-holder died without taking out execution of his decree, and, two days after his death, his pleader made an application for execution on his behalf, this being the first application of the kind,—*held* that, inasmuch as the authority of a pleader ceases at the moment of his client's death, the application was invalid, and was not such an application or step in aid of execution of the decree as could save a subsequent application for execution by the decree-holder's heirs from being barred by limitation.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the Court.

Munshi *Kashi Prasad*, for the appellants.

Babu *Ram Das Chakarbat*i and Munshi *Ram Prasad*, for the respondents.

MAHMOOD, J.—We are of opinion that this appeal should be dismissed. The facts necessary for consideration in connection with the point of law seem to be as follows:—A decree, dated the 13th February, 1880, was held by one Ram Lal, in whose favour it had been passed. No execution appears to have been taken out by the original decree-holder, who died on the 11th February, 1883. Two days after his death, on the 13th February, an application was made on his behalf by his pleader for execution, this being the first application of the kind. The Court executing the decree admitted the application as being within time, but the judgment-debtor appealed from the order passed on the application to the District Judge, who passed an order that "the heirs might be allowed to carry on the execution;" and he seems to have directed the heirs to make an application within two days from the date of his decision. It is unnecessary to consider whether or not such a direction was legal; but, as a matter of

* Second Appeal No. 51 of 1884, from an order of G. W. P. Watts, Esq., Offg. District Judge of Saharanpur, dated the 25th January, 1884, reversing an order of Babu Ishri Prasad, Munsif of Deoband, dated the 22nd November, 1883.

fact, no application for execution was made by the present appellants, the heirs of the decree-holder, until the 30th August, 1883, and it is in connection with the application then made that the present appeal has been preferred.

The Court of first instance, regarding the judgment of the District Judge as conclusive as to the validity of the former application, entertained the present as within time. There was however no such adjudication as would be covered by the Privy Council ruling in the case of *Ram Kirpal v. Rup Kuari* (1), and therefore the District Judge on appeal held that execution of the decree was barred. The appeal has now come before us, and the whole matter depends on the question whether the application for execution of the 13th February, 1883, was such an application or step in aid of execution of decree as would prevent limitation from running out in regard to this application. Now it is clear, and it has been admitted, that the decree-holder had died two days before the application was made. No valid application could be made by his pleaders, because the authority of a pleader ceases at the moment of his client's death, and therefore we hold that the period of limitation should be calculated from the date of the decree up to the date of the present application, and that being a period of more than three years, the application is barred, and the appeal must be dismissed with costs.

BRODHURST, J., concurred.

Appeal dismissed.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

AIMAD KHAN (JUDGMENT-DEBTOR) v. MADHO DAS (OBJECTOR)*.

Civil Procedure Code, ss. 322B, 322D—Dispute as to extent of judgment-debtor's liability to claim—Appeal from order disposing of dispute—Nature of appeal—Act VII of 1870 (Court Fees Act), sch. ii, No. 11.

An appeal from the decision of a dispute under s. 322B of the Civil Procedure Code falls directly within the exception of art. 11 of sch. ii of the Court-Fees Act (VII of 1870), and the memorandum of appeal should therefore be presented as for a decree in a suit, upon an *ad valorem* stamp.

Srinivasa Ayyinga v. Peria Tambi Nayakar (2) dissented from.

* First Appeal No 141 of 1884, from an order of J. L. Denniston, Esq., Offg. District Judge of Ghazipur, dated the 13th May, 1884.

(1) L. L. R., 6 All 269; L. R., 11 Ind. Ap. 37.

(2) L. L. R., 4 Mad. 420.

1885

March 16.

KALLU
v.
MUHAMMAD
ABDUL.