

1885
February 25.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Straight.

LACHMAN (JUDGMENT-DEBTOR) v. THONDI RAM (DECREE-HOLDER).*

Execution of decree—Limitation—Transmission of decree for execution—Application for execution of attached decree—“Step in aid of execution”—Act XV of 1877 (Limitation Act), sch. ii, No. 179 (1)—Civil Procedure Code, ss. 223, 228, 273.

A decree was passed on the 20th February, 1878, by the Munsif of *M*. In November, 1878, it was, in accordance with the provisions of s. 223 of the Civil Procedure Code, transferred to the Munsif of *J*. On the 21st January, 1879, an application for execution of the decree was made to the Munsif of *J*, who thereupon issued an order for the attachment of some immoveable property belonging to the judgment-debtor and also for the attachment of three decrees standing in his Court in favour of the judgment-debtor against other persons. On the 18th March, 1882, the decree-holder applied to the Munsif of *J* to execute one of these decrees in his behalf, and he further asked that whatever might be realized in such execution should go to the account of the decree which had been transferred, and which was being executed.

Held that the application of the 18th March, 1882, was perfectly legal, and such a proceeding as could keep alive the decree of the 20th February, 1878, and that a subsequent application for execution dated the 12th April, 1883, was therefore not barred by limitation.

An application to execute an attached decree is a “step in aid of execution” of the original decree, within the meaning of art. 179, sch. ii of the Limitation Act, inasmuch as its object is to obtain money in order to pay off the judgment-debtor.

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

Mr. *Amiruddin*, for the appellant.

Munshi *Hanuman Prasad*, for the respondent.

The Court (PETHERAM, C. J., and STRAIGHT, J.) delivered the following judgments:—

PETHERAM, C. J.—I think that this appeal must be dismissed with costs, and for the purposes of my judgment, I propose only to state the view which I take in connection with art. 179 of the Limitation Act. My brother Straight will deal with the facts of the case, and with the procedure which has been followed.

The question as to art. 179 is whether an application to execute an attached decree is a “step in aid of execution” of the original

* Second Appeal No. 41 of 1884, from an order of Babu Abinash Chandar Banarji, Subordinate Judge of Agra, dated the 10th February, 1884, reversing an order of Maulvi Nazar Ali, Munsif of Mahaban, dated the 28th July, 1883.

decree. It appears to me that an application for execution of a money-decree means an application to the Court to get the money by sale of property belonging to the judgment-debtor, so that the Court may be able to pay the creditor the amount due to him. In the present case such an application was made by the judgment-creditor, and the Court then took the first step in aid of the execution of the decree by attaching the debtor's property, and the property so attached included a judgment-debt. That judgment-debt had to be sold or realized in some way, and it could only be done by applying to the Court in which the judgment was to execute it by selling the debtor's property. It would then be necessary to make an application to the Court executing the original decree to bring the amount so received into account, and that is what was done in the present case. If I am right in the view which I take of execution of decree, this must be "a step in aid of execution" within the meaning of art. 179 of the Limitation Act, because the object of it was to obtain money in order to pay off the judgment-debt; and it was in execution for that reason. I am therefore of opinion that the order of the lower appellate Court was right, and that the appeal must be dismissed with costs.

STRAIGHT, J.—It will be convenient, in reference to what the Chief Justice has said, that I should illustrate his observations by describing the circumstances of the case. The decree now in question was passed on the 20th February, 1878, and it was passed by the Munsif of Muthra. On the 21st November, 1878, an application was put in for the transfer of the decree to the Munsif of Jalesar, and, in accordance with the provisions of s. 223 of the Civil Procedure Code, it was transferred to him, and he then became seized of it, and, under s. 228 of the Civil Procedure Code, acquired thereupon the same powers in regard to its execution as if he had himself passed it. On the 21st January, 1879, the application for execution proper, so to speak, was made to the Munsif of Jalesar, who seems to have issued an order for the attachment of some immoveable property belonging to the judgment-debtor, as also for attachment of three decrees standing in his Court in favour of the judgment-debtor against other persons. Two at least of these decrees related to immoveable property. On the 18th March, 1882, a formal application was made by the decree-holder, the res-

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pendent in the present appeal, to the Munsif of Jalesar to execute one of these decrees on his behalf; and he further asked that whatever might be realized in such execution should go to the account of the decree which had been transferred, and which was being executed. We are now invited by the learned counsel for the appellant to hold that a subsequent application for execution of the decree, dated the 12th April, 1883, was barred by limitation. He contends that the application of the 18th March, 1882, was not such a proceeding as could keep alive the decree of the 20th February, 1878. I am wholly unable to accept this contention. Under s. 228 of the Code, the decree having been transferred to the Munsif of Jalesar, he had, in executing it, the same powers as if he had himself passed it; and any order passed by him under s. 273 would be made under the first paragraph of that section, because it would be an order directing the proceeds of the former decree to be applied in satisfaction of the latter decree. I cannot see what other course the judgment-creditor could have adopted than that which he actually took. It appears to me that the application of the 18th March, 1882, was perfectly in order and perfectly legal, and I therefore hold that the application of the 12th April, 1883, was not barred by limitation, and the appeal should be dismissed with costs. I may add that I entirely concur with the Chief Justice in the construction which he puts upon the terms used in the third column of art. 179 of the Limitation Act.

Appeal dismissed.

Before Mr. Justice Oldfield and Mr. Justice Mahmood.

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February 27.

UMRAI AND OTHERS (DEFENDANTS) v. RAM LAL AND OTHERS (PLAINTIFFS).*

Suit for share of compensation awarded for land acquired for public purposes—Suit for money had and received for plaintiff's use—Small Cause Court suit.

A suit was brought by some of the co-sharers in a patti of a mahal in which land had been taken for public purposes under the Land Acquisition Act, against the other co-sharers in the patti for the proportion due to them out of a sum of money which had been awarded as compensation for the acquisition of the land, and which the defendants had received.

* Second Appeal No. 487 of 1884, from a decree of Rai Pandit Jagat Narain, Subordinate Judge of Furukhabad, dated the 12th February, 1884, reversing a decree of Maulvi Muhammad Auwar Husain, Munsif of Kaimganj, dated the 1st September 1885.