

joint, there arises, as I have already said, an implied authority by the joint holders of the right to act for each other, and such authority would enable any one or more holders of the joint right to maintain a suit in their own name for enforcing the whole right, and in case any of them refused to join in the suit, the proper course would be to implead them as *pro forma* defendants, and the Court having before it all persons interested in the matter could do justice between them. But no such implied authority can be understood to exist between the various heirs of a deceased person who dies leaving property which devolves in specific shares upon his heirs, whether such property consists of a money-bond or land. Any one of such heirs therefore cannot sue for more than his share, and the plaintiff was therefore entitled to maintain this suit. The other shareholders in the bond whom the plaintiff impleaded as *pro forma* defendants might have joined in the suit as plaintiffs under the provisions of s. 26 of the Civil Procedure Code, but that section cannot be understood to render such joinder imperative, and indeed in cases where dissensions exist among the heirs, such joinder is practically impossible. In the present case, therefore, the plaintiff could not sue for more than his share in the bond, and I hold that the learned Judge was wrong in law in throwing out the suit on the preliminary ground.

My answer to the question is therefore in the affirmative.

APPELLATE CIVIL.

Before Mr. Justice Brodhurst and Mr. Justice Duthoit.

ZAHUR KHAN AND ANOTHER (JUDGMENT DEBTORS) v. BAKHTAWAR
AND OTHERS (DECREE-HOLDERS). *

Execution of decree—Decree payable by instalments—Execution of whole decree—Construction of decree—Payments out of Court—Act XV of 1877 (Limitation Act), sch. ii, No. 179 (6)—Civil Procedure Code, s. 253—Limitation.

A decree passed against the defendant in a suit, and dated the 13th March, 1877, directed "that the plaintiff should recover the decree-money by instalments, agreeably to the terms of the deed of compromise, and he, in case of default, should recover in a lump sum." The compromise mentioned in the decree pro-

* Second Appeal No. 59 of 1884, from an order of H. D. Willock, Esq., District Judge of Azamgarh, dated the 16th February, 1884, affirming an order of Babu Madho Lal, Officiating Subordinate Judge of Azamgarh, dated the 17th January, 1884.

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vided that the amount in dispute should be paid in ten instalments, from 1284 to 1294 fasli, the first to be paid on the 27th May, 1877 (1284 fasli), and the remaining nine instalments on Jaith Puranmashi of each succeeding fasli year. On the 1st September, 1883, the decree-holders applied for execution of the decree, alleging that the first four instalments had been paid, but not any of the succeeding instalments, and they claimed to recover, under the terms of the decree, the fifth and all the remaining instalments in a lump sum. The judgment-debtors contended that the application was barred by limitation, as they had not paid a single instalment, and more than three years had elapsed from the date of the first default; and that, even if the first four instalments had been paid, such payments could not be recognised by the Court as they had not been certified.

Held, reversing the decision of the lower appellate Court, that if the four annual instalments had not been paid under the decree, the execution of the decree was barred by limitation.

Held also, that recognition of such instalments was not barred by the terms of s. 258 of the Civil Procedure Code. *Sham Lal v. Kanahia Lal* (1) and *Fakir Chand Bose v. Madan Mohan Ghose* (2) followed.

THE decree of which execution was sought in this case was in these terms:—“That a decree be passed against the defendant in favour of the plaintiff for Rs. 3,327-7-0, being the amount sued for, with costs and interest during the pendency of the suit, together with interest at the rate of ten annas per cent. from this day, by establishment and enforcement of lien against the hypothecated property; that the plaintiff should recover the decree-money by instalments, agreeably to the terms of the deed of compromise, and in case of default he should recover in a lump sum.”

The compromise mentioned in this decree provided that the Rs. 3,327-7-0 should be paid in ten instalments, from 1284 to 1294 fasli, the first, Rs. 327-7-0 in amount, to be paid on the 27th May, 1877 (1284 fasli), and the remaining nine instalments, Rs. 300 each, to be paid on Jaith Puranmashi of each succeeding fasli year. The decree was dated the 13th March, 1877. On the 1st September, 1883, the decree-holders applied for execution of the decree. They alleged that the first four instalments had been paid, but not any of the succeeding instalments, and they claimed to recover, under the terms of the decree, the 5th and all the remaining instalments in a lump sum. The judgment-debtors contended that the application was barred by limitation, as they had not paid a single instalment, and more than three years had elapsed from the date of the first default; and that if even the first four instalments

had been paid, such payments could not be recognised by the Court, as they had not been certified. The Court of first instance (Subordinate Judge of Azamgarh) held that it was immaterial whether the decree-holders had or had not received the first four instalments, as the application had been made within three years from Jaith Puranmashi 1288 fasli (12th June, 1881), the date the 5th instalment fell due. On appeal by the judgment-debtors, the lower appellate Court (District Judge of Azamgarh) affirmed the order of the first Court.

It observed :—“The appeal fails. All the rulings that have been given on the subject of such limitations are in favour of the decree-holders' case. Art. 179, sch. ii, Act XV of 1877, corresponds with art. 167 of the second schedule of Act IX of 1871, and the rulings of the Allahabad Court (*Kanchan Singh v. Sheo Prasad*, I. L. R., 2 All. 291) and of the Calcutta Court (*Nilmadhub Chuckerbatty v. Ramsodoy Ghose* (I. L. R., 9 Calc. 857) are one, that is, to the effect that in such cases it is immaterial whether former instalments were paid or not; that applications made within three years from the date on which any instalment claimed fell due are within time; that the clause in a decree empowering a decree-holder to execute the decree for the whole amount due on the default of any instalment was made solely for his benefit and protection, and did not contract any of the privileges otherwise granted.”

The judgment-debtors appealed to the High Court on the grounds that the period of limitation for the application for execution should be computed from the date of the first default, and that the cases cited by the lower appellate Court were not applicable to the present case, because in the present case the payment of the instalments was denied. It was also contended that the disputed payments, even if made, could not be recognised, as they had not been certified.

Pandit *Ajudhia Nath* and *Shah Asad Ali*, for the appellants,

Munshi *Hanuman Prasad*, for the respondents,

The Court (BRODHURST and DUTHOIT, JJ.) delivered the following judgment :—

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DUTHOIT, J.—We do not agree with the lower appellate Court that it is immaterial whether four annual instalments had or had not been paid under the decree, for we consider that if they were not paid, the execution of the decree was time-barred. We are unable, however, to accept the contention of the learned pleader for the appellants, that cognizance of payment of such instalments is barred by the terms of s. 258 of the Civil Procedure Code. This contention is opposed to the ruling of a Division Bench of this Court in *Sham Lal v. Kanahia Lal* (1) which followed and approved a Full Bench decision of the Calcutta Court—*Fakir Chand Bose v. Madan Mohan Ghose* (2).

We reverse the decision of the lower appellate Court upon the preliminary point noted above, and remand the case for disposal on the merits, after ascertainment of the fact whether the four instalments were or were not paid under the decree as asserted by the decree-holders and denied by the judgment-debtors. The costs of this appeal will abide the final result.

Appeal allowed.

Before Mr. Justice Brodhurst and Mr. Justice Duthoit.

RAM LAL (DECREE-HOLDER) v. RADHEY LAL AND ANOTHER
(JUDGMENT-DEBTORS). *

Execution of decree—Powers of Court in executing transmitted decree—Civil Procedure Code, ss. 228, 239.

The powers which the foreign Court has, under s. 228 of the Civil Procedure Code, are confined to the execution of the decree, and the Court cannot question the propriety or correctness of the order directing execution, nor can it, with reference to s. 239 of the Code, stay execution except temporarily.

Held, therefore, where the drawers of a hundi, against whom the indorsee from the payee had obtained a decree on the hundi, objected in the Court to which the decree had been transmitted for execution that execution should not be allowed, because the payee had paid the amount of the hundi to the decree-holder, after the decree had been passed, and such Court refused to entertain the objection, that the order of the lower appellate Court directing that the parties should be allowed to produce evidence in regard to the alleged payment, and that, should the Court of first instance find that the decree-holder had received satisfaction to the full amount of the decree, the judgment-debtors should be absolved from all liability under the decree, could not be maintained.

* Second Appeal No. 80 of 1884, from an order of A. Sells, Esq., District Judge of Cawnpore, dated the 2nd July, 1884.

(1) I. L. R., 4 All., 316. (2) 4 B. L. R., 130.

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