

*Before Sir John Edge, Kt., Chief Justice and Mr. Justice Banerji.*

1895  
January 21

BADI-UN-NISSA (JUDGMENT-DEBTOR) v. SHAMS-UD-DIN AND OTHERS  
(DECREE-HOLDERS).\*

*Act No. XV of 1877, (Indian Limitation Act) Sch. ii, Art. 179—Limitation—  
Date of final decree or order of the Appellate Court—Execution of decree.*

Certain plaintiffs obtained a decree for pre-emption in respect of four villages. The defendant appealed, and the lower appellate Court dismissed the appeal. The defendant again appealed, but in his appeal only questioned the decision of the lower appellate Court in respect of two of the villages in suit. In this second appeal the plaintiffs' suit was dismissed as to one of the villages with regard to which the appeal was preferred and the defendant's appeal was dismissed as to the other

*Held* that in respect of all the three villages as to which the final decree stood in favor of the plaintiffs, limitation began to run against the decree-holders from the date of the decree in second appeal, and not as to two of them from the date of the lower appellate Court's decree. *Hur Proshaud Roy v. Enayet Hossein* (1), *Sangram Singh v. Bujharat Singh* (2) and *Mashiat-un-nissa v Bani* (3) distinguished.

THE facts of this case are as follows :— .

The plaintiffs-respondents obtained a decree for pre-emption in respect of shares in four villages sold under a single instrument for a single price, *viz.*, Ujhani, Qayam-ud-dinpur, Hasanpur and Bhonka. The defendant appealed in respect of all four villages, and the lower appellate Court upheld the decree of the Court of first instance on the 19th of December 1889. The defendant appealed to the High Court in respect of Ujhani and Hasanpur only, and on the 16th November 1892 the High Court decreed the appeal as regards Ujhani, but dismissed it as to Hasanpur. On the 9th of March 1893 the plaintiffs applied for execution of their decree by delivery of possession of Qayam-ud-dinpur, Bhonka and Hasanpur. The defendant objected that execution of the decree so far as it related to Qayam-ud-dinpur and Bhonka was barred by limitation. The Munsif, in whose Court the application was made, disallowed the objection.

\* Letters Patent Appeal No. 84 of 1894.

(1) 2 C. L. R., 471. (2) I. L. R., 4 All. 36.

(3) I. L. R., 13 All. 1.

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The judgment-debtor appealed and her appeal was decreed by the Subordinate Judge.

The decree-holders then appealed to the High Court, which, on the 19th of April 1894, decreed the appeal and restored the order of the Munsif.

From this decree the judgment-debtor appealed under s. 10 of the Letters Patent.

Munshi *Ram Prasad*, for the appellant.

Babu *Datti Lal*, for the respondents.

EDGE, C. J. and BANERJI, J.—The respondents here obtained a decree for pre-emption of certain shares in four villages, which we shall call respectively No. 1, No. 2, No. 3 and No. 4 villages. The appellant, who was the defendant in the suit, appealed that decree to the Court of the District Judge. The District Judge on the 19th of December 1889, dismissed the appeal and confirmed the decree of the Court of first instance. From that decree of the District Judge, the defendant appealed to this Court, in respect only of villages 1 and 3. By his appeal he did not question the decree so far as villages 2 and 4 were concerned. On the 10th of November 1892, this Court varied the decree of the Court below by dismissing the plaintiff's suit so far as village No. 1 was concerned, and dismissed the defendant's appeal as to No. 3. On the 29th March 1893, the plaintiffs applied for execution of their decree in respect of villages Nos. 2, 3 and 4. To that application the defendant objected in respect of villages 2 and 4 that the execution was barred by three years' limitation. The Court executing the decree disallowed the objection. The Subordinate Judge in appeal reversed the decree of the first Court and allowed the objection. The plaintiff appealed to this Court, and Mr. Justice Tyrrell in appeal reversed the decree of the Subordinate Judge and restored that of the Court of first instance. From that decree of Mr. Justice Tyrrell this appeal has been brought under s. 10 of the Letters Patent.

It has been contended by Munshi *Ram Prasad* for the appellant that the decree of the District Judge became final as to villages 2

and 4, and that the three years' limitation prescribed by article 179 of schedule ii of Act No. XV of 1877, began to run, so far as villages 2 and 4 are concerned, from the 19th of December 1889, which was the date of the decree of the District Judge in the appeal in the suit. He has cited the following cases:—*Hur Proshad Roy v. Enayet Hossain* (1), *Sangram Singh v. Bujharat Singh* (2) and *Mashrat-un-Nissa v. Rani* (3); but in these cases all the parties to the suit were not parties to the various appeals from the decree in the suit. The decree of this Court in the appeal in the suit as a matter of fact varied the decree in the suit by dismissing the suit of the plaintiffs as to one of the villages. There was consequently, in our opinion, no final decree between these parties until the decree of this Court was made. It is true that this Court, in the appeal to it, was bound to treat as final the rights of the parties *quæ* villages 2 and 4, as those villages were not the subject of appeal to it, but still it was the decree of the High Court which became the final decree between the parties to the suit. This case is distinguishable from those cited to us, for in those cases, as some of the parties to the earlier decrees were not parties to the subsequent decrees, the earlier decrees became final in the suit, so far as they were concerned, as between themselves, but here the final decree in the suit between the parties was the decree of this Court. We are, consequently, of opinion that paragraph 2 of article 179 of schedule ii the Indian Limitation Act, 1877, applies in this case, and that the application for execution was in time.

The appeal is dismissed with costs.

*Appeal dismissed.*

- (1) 2 C. L. R., 471.      (2) I. L. R., 4 All. 86  
 (3) I. L. R., 18 All. 1.

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