1896

UJAGAR LAL v. JIA LAL.

buy in preference to a stranger; and that is a perfectly reasonable custom or contract as the case may be. There is nothing to show, in that view of the law, that on the previous occasion the plaintiff acted contrary to the provisions of the *wajib-ul-arz*, for there is nothing to show that any co-sharer desired to take the mortgage. Even if the plaintiff had on a previous occasion acted in violation of the provisions of the *wajib-ul-arz* as to pre-emption, we should hesitate before deciding that such previous contravention of the provisions of the *wajib-ul-arz* deprived him of all right to claim pre-emption in case of a mortgage or sale of another share by another co-sharer in the village. We are disposed to think that the decision in *Gokul Chand* v. *Ram Prasad* (1) was right. It must not be assumed from what we have said that we throw any doubt on the correctness of the decision in *Bhajjo* v. *Lalman* (2), with the decision in which case on the facts there before the Court we agree. We allow this appeal, and, setting aside the decrees of the Court below and the first Court, we remand this case under section 562 of the Code of Civil Procedure to the Court of first instance to be disposed of on the merits. Costs here and hitherto will abide the result.

Appeal decreed and suit remanded.

1896
May 21.

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

HINGAN LAL (JUDGMENT-DEBTOR) *v.* MANSA RAM (DECREE-HOLDER).*

Execution of decree—Limitation—Act No. XV of 1877, section 19—Acknowledgment—Admission of liability contained in a memorandum of appeal in a different suit.

An admission made by an advocate or duly authorized vakíl on behalf of his client in a memorandum of appeal in a case not *inter partes* that a certain decree was a subsisting decree capable of execution will amount to an acknowledgment within the meaning of section 19 of Act No. XV of 1877 so as to give a fresh starting point to limitation for execution of such decree, provided that such ad-

---

Second Appeal No. 314 of 1894, from an order of H. Bateman, Esq., District Judge of Saháranpur, dated the 10th March 1894, confirming an order of A. M. R. Hopkins, Esq., Subordinate Judge of Dehra Dún, dated the 13th November 1893.

(1) Weekly Notes 1889, p. 127. (2) I. L. R., 5 All., 180.

mission was necessary for the purposes of the pleadings in the former case. *Sed quære* whether such admission will have a similar effect if it was not necessary for the purposes of the suit in which it was made. *Ram Hit Rai* v. *Satyur Rai* (1) followed.

THE facts of this case sufficiently appear from the judgment of the Court.

Messrs. *T. Conlan* and *J. Simeon* for the appellant.

Pandit *Sundar Lal* for the respondent.

EDGE, C. J., and BLENNERHASSETT, J.—This was an appeal from an order passed in execution of a decree. The question is, was the present application for execution barred by limitation? The present application for execution was presented more than three years after the last preceding application for execution, and consequently would ordinarily be barred by limitation. The decree-holder relied on a written statement which was signed and filed by the judgment-debtor in another suit to which the present decree-holder was not a party, and also on a memorandum of appeal in that suit, which was signed and filed by the advocate of the present judgment-debtor, as containing acknowledgments, within the meaning of section 19 of Act No. XV of 1877, sufficient to give a new start to limitation.

The acknowledgment relied on in the written statement was merely a statement of the fact that the judgment-debtor had been declared liable to the payment of a certain sum of money by a certain decree passed in a certain year, which happened to be the decree now sought to be executed. In our opinion the mere statement of a fact that a decree was passed against a party on a certain date for a certain amount is not an acknowledgment that that decree is capable of execution so as to come within section 19 of Act No. XV of 1877. It is merely a statement of a fact that a decree was passed, and not an acknowledgment that there is a present liability under the decree. If we were to hold that the statement of fact in that written statement amounted to an acknowledgment within section 19 of Act No. XV of 1877, we should

(1) 1. L. R., 3 All., 247.

1896

HINGAN LAL v. MANSA RAM.

be practically making it impossible for a defendant to comply safely with the Code of Civil Procedure by giving in his written statement a simple narrative of the facts on which he based his defence.

We now turn to the memorandum of appeal. The appellant sought in appeal relief on two grounds The first was that a certificate should not have been sent from the Court at Mussoorie to the Court at Saharanpur in execution of the decree, and secondly that the decree attempted to be executed was incapable of execution.

To take the latter point first. In the memorandum of appeal signed by the advocate it was stated:—"The only decree which is capable of execution against the judgment-debtor Nagar Mal is the decree of the appellate Court dated the 25th September 1886, and not that of the 15th of June 1886, which was modified in appeal." The meaning of that is that the decree-holder in that case was attempting to execute a decree of the first Court, whereas the decree of the Court of appeal was the only decree which could be executed. In our opinion, if that ground of appeal had been simply as follows—"The decree sought to be executed has been appealed against and has been modified by the decree of the appellate Court, and consequently cannot be executed"—, there would have been no acknowledgment that the decree of the appellate Court, which appears to be the decree now sought to be executed, was capable of execution. We strongly doubt that either an advocate or a vakíl could make a signed acknowledgment within the meaning of section 19 of Act No. XV of 1877, so as to bind his client, if the acknowledgment relied on was unnecessary for the purpose for which the advocate or vakíl had been retained. In the case to which we are referring it was absolutely unnecessary for the advocate to have made in the particular ground of appeal any admission that the decree of the 25th of September 1886, was capable of execution. The point, so far as that ground of appeal was concerned, was not whether the decree of the 25th of September 1886, was capable of execution. The point was:—The decree of the

15th of June 1886 having been modified in appeal, could it be executed?

Now to refer to the other ground stated in that memorandum of appeal. The decree in that case had been passed by a Court at Mussoorie. The complaint in appeal was that it had been wrongly transferred for execution to the Court at Saharanpur, and the appellant in those proceedings sought to make out that case by showing that he had property within the local limits of the jurisdiction of the Mussoorie Court sufficient to satisfy the decree against him. Consequently for that ground of appeal it was necessary to state the fact that there was property of the then appellant within the jurisdiction of the Mussoorie Court sufficient to satisfy the decree. In our opinion that ground of appeal could not have been worded so as to raise the case which the then appellant was trying to raise without acknowledging that the decree of the 25th of September 1886 was enforceable against him, and that was an acknowledgment of a subsisting liability. All that remains is to see whether a memorandum of appeal signed by an advocate or vakíl duly authorized in that behalf by his *vakalat-namah* which contains an acknowledgment of liability is within section 19 of Act No. XV of 1877. It appears to us that the whole question is concluded by the Full Bench ruling of this Court in *Ram Hit Rai* v. *Satgur Rai* (1). The principle of that case seems to have been applied in many cases, and, whether applied or not, is binding on us. We consequently hold that limitation began to run from the date of the memorandum of appeal filed in the suit between Mansa Ram and Nagar Mal, and that the present application for execution is within time. We dismiss the appeal with costs.

Appeal dismissed.

(1) I. L. R., 3 All., 247.