

on payment of one-third of the sale price, provided that he has complied with all the requirements of Muhammadan law. In this case it was denied that he had made the preliminary demands, and it was asserted that the sale had taken place with his consent. There was also a dispute as to the actual amount of the sale price. These questions have not been decided by the lower appellate Court. As that Court dismissed the suit upon a preliminary point, and its decision upon that point is, in our opinion, erroneous, we set aside the decree below and remand the case to the lower appellate Court under section 562 of the Code of Civil Procedure with directions to readmit it under its original number in the register and to dispose of it according to law. Costs here and hitherto will abide the event.

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 AMIR
HASAN
v.
RAHIM
BAKSH.

Appeal decreed and case remanded.

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

MOTI LAL (DECREE-HOLDER) v. MAKUND SINGH AND OTHERS (JUDGMENT-DEBTORS).*

 1897
May 11.

Execution of decree—Limitation—Act No. XV of 1877, (Indian Limitation Act) Sch. ii, Art. 179(4)—“Step in aid of execution”—Application by decree-holder to be put in possession of property which he has purchased at a sale in execution of his decree.

Held that an application made by a decree-holder to be put into possession of property which he had purchased at an auction sale held in execution of his decree was a “step in aid of execution” of that decree, and would afford the decree-holder a fresh starting-point for limitation. *Sujan Singh v. Hira Singh* (1) referred to.

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

Mr. W. K. Porter and Munshi Gobind Prasad, for the appellant.

Munshi Ram Prasad and Babu Satya Chandar Mukerji, for the respondents.

EDGE, C.J. and BLAIR, J.—The question before us is as to whether execution of a decree for money in this case was barred

* First Appeal No. 144 of 1895 from an order of Babu Bepin Bihari Mukerji, Officiating Subordinate Judge of Aligarh, dated the 6th May, 1895.

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by limitation on the 19th of January, 1895, when an application, out of which this appeal has arisen, was made.

The decree-holder, or rather his heir, is appellant here. The decree-holder obtained his decree for money, and, under an application of the 9th of April, 1890, he, on the 20th of November, 1891, brought some property of the judgment-debtors (respondents here) to sale, and, having obtained leave to purchase, he purchased it himself. On the 21st of January, 1892, the sale was confirmed. On the 9th of February, 1892, he obtained a certificate of sale in respect of the sale to which we have referred. On the 29th of February, 1892, the decree-holder applied to the Court to be put in possession of the property which he had purchased. On the 21st of March, 1892, the decree-holder was put in possession by the Court. On the 6th of April, 1892, the decree-holder died and was succeeded by his minor son, appellant here, and on the 19th of January, 1895, the son filed the present application for execution of the decree. The Subordinate Judge of Aligarh dismissed the application, holding that the execution of the decree was barred by limitation.

In order to save limitation the appellant has relied upon the application for a certificate of sale of the 9th of February, 1892, and the application to be put into possession of the 29th of February, 1892. If the making of either of these applications by the decree-holder was the taking of a step in aid of execution of the decree, the application of the 19th of January, 1895, was within time.

Now it has been held by this Court that an application by a decree-holder to obtain payment to him out of Court of purchase money paid for the property of his judgment-debtor at a sale held under the decree-holder's decree was "taking a step in aid of execution" within the meaning of article 179, paragraph 4, of the Limitation Act. That decision was approved of by the Full Bench of this Court in *Sujan Singh v. Hira Singh* (1). A proceeding in execution cannot be said to be completed (at least so

far as a decree-holder is concerned) in a case of sale until he has obtained the proceeds and benefit of the sale held in execution of his decree. Consequently it appears to us that an application to be paid out of Court the proceeds of such sale must be considered as the taking of a step in aid of the execution of the decree.

Now, apart from procedure, which does not assist us in ascertaining or applying principles of law, is there any difference between the case of a decree-holder applying to the Court to be paid out of Court the proceeds of a sale held in execution of his decree for money, and the case of a decree-holder, where he has himself purchased—consequently where no money passes—applying to the Court to be put in possession of that which represents money, which, if a third person had purchased, would have been paid into Court.

Mr. *Ram Prasad*, for the judgment-debtor, has contended that, inasmuch as the decree-holder, when he purchases, files in Court a receipt for so much of his judgment-debt as represents his purchase-money, he, on filing that receipt, must be treated as having received the purchase-money. The filing of the receipt is a mere matter of procedure, no money passes or is intended to pass, unless the purchase-money is in excess of the judgment-debt, and the execution of his decree cannot be said to be satisfied until in the one case he has received the purchase-money paid into Court, and in the other case until he be put into possession of the property of his judgment-debtor which he has purchased and which represents money, which, if a third person purchased, would have been paid into Court, and upon the decree-holder's application would have been paid out to him. We can see no difference between the two cases.

We hold that the application of the 19th January, 1895, to execute this decree was within time. We allow this appeal with costs, and we direct the Court below to proceed with the execution of the decree.

Appeal decreed.

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 MOTI LAL
 v.
 MAKUND
 SINGH.