

1896

INDO MATI
v.
GAYA
PRASAD.

opinion as to whether there was good cause or not, as the other side should be allowed an opportunity of producing evidence on the point if necessary. We set aside the order of the Subordinate Judge and remand the case under section 562 of the Code of Civil Procedure to his Court for the application to be disposed of on the merits. The costs of this appeal will abide the result.

Appeal decreed and cause remanded.

1896
December 18.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Blair.
LALMAN (JUDGMENT-DEBTOR) v. GOPI NATH (DECREE-HOLDER).
Civil Procedure Code, section 357—Insolvency—Execution of decree—
Limitation.

Section 357 of the Code of Civil Procedure provides a limitation of its own and in substitution for the limitation provided for the execution of decrees by the Indian Limitation Act, 1877.

In this case one Lalman applied to the District Judge of Farukhabad, on the 11th of April 1889, to be declared an insolvent, and was discharged by an order under section 355 of the Code of Civil Procedure on the 7th of October 1890. On the 21st of February 1896, Gopi Nath, one of the judgment-creditors of Lalman, applied to the Court for execution of his decree against certain property which he alleged to have been acquired by the insolvent subsequently to his discharge. To this application the insolvent objected, pleading, *inter alia*, that execution of the decree in question was barred by limitation, the provisions of section 357 of the Code of Civil Procedure not being exclusive of the rules of limitation for the execution of decrees prescribed by Act No. XV of 1877. This objection was disallowed and execution was ordered to proceed, a new receiver being appointed. The judgment-debtor appealed to the High Court.

Mr. *E. A. Howard*, for the appellant.

Munshi *Ram Prasad*, for the respondent.

EDGE, C.J. and BLAIR, J.—In our opinion section 357 of the Code of Civil Procedure provides a limitation of its own and in

* First Appeal No. 170 of 1896, from an order of G. A. Tweedy, Esq., District Judge of Farukhabad, dated the 13th April 1896.

substitution for the limitation provided for the execution of decrees by the Indian Limitation Act, 1877. It could not have been the intention of the Legislature that when there was no property other than that previously vested in the receiver and exempted from execution, and no property subsequently acquired possibly until eleven years after the discharge of the insolvent, the judgment-creditors, in order to keep their decrees alive, should be obliged to make fruitless applications for execution during the period to which the provisions of section 357 apply. We dismiss this appeal with costs.

1896

 LALMAN
 v.
 GOPI NATH.

Appeal dismissed.

Before Mr. Justice Aikman.

DIWAN SINGH AND OTHERS (DEFENDANTS) v. JADHO SINGH (PLAINTIFF).*
 Act No. III of 1887 (*Indian Registration Act*), section 50—Registered and unregistered documents—Priority—Notice.

1896

December 23.

Held that section 50 of the Indian Registration Act, 1877, will not avail to give the holder of a subsequent registered deed priority in respect of his deed over the holder of an earlier unregistered deed, not being a compulsorily registrable deed, if in fact the holder of the registered deed has at the time of its execution notice of the earlier unregistered deed. *Abool Hossein v. Raghu Nath Sahu* (1), *Hathising Sobhai v. Kuvarji Jacher* (2), and *Krishnamma v. Suranna* (3) followed. *The Agra Bank v. Barry*, (4) and *Ram Antar v. Dhanauri* (5), referred to.

This was a suit for sale upon a mortgage. The mortgage in question was executed on the 14th of January 1893, and, being for a sum below Rs. 100, was not registered. The defendants to the suit comprised the mortgagor, a subsequent mortgagee and certain persons who had purchased the property mortgaged to the plaintiff under a registered sale-deed executed subsequently to the plaintiff's mortgage. The vendee defendants resisted the suit, relying on their sale-deed and on section 50 of the Registration Act, 1877.

* Second Appeal No. 308 of 1896, from a decree of Maulvi Muhammad Mazhar Husain Khan, Subordinate Judge of Mainpuri, dated the 16th January 1896, modifying a decree of Munshi Tara Prasad, Munsif of Phaphund, dated the 15th April 1895.

(1) 1. L. R., 13 Cal., 70.

(3) 1. L. R., 16 Mad., 148.

(2) 1. L. R., 10 Bom., 105.

(4) 7, E. and I. A., 135.

(5) 1. L. R., 8 All., 540.