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June 28.

*Before Mr. Justice Blair and Mr. Justice Aikman.*JIWAT DUBE (DECREE-HOLDER) v. KALI CHARAN RAM AND OTHERS  
(JUDGMENT-DEBTORS).\**Execution of decree—Application for execution giving wrong date of decree—Amendment allowed after limitation—Amendment relating back to former applications.*

J. obtained a decree on two mortgage bonds on the 25th November, 1885. That decree was set aside, but another decree was passed in his favour on the 21st of September, 1886. The decree-holder made several applications to execute the decree, but in each described the decree as of the 25th November, 1885. On the third application the judgment-debtor objected that the application was time-barred. The application was allowed to be amended, but the amendment took place after the expiry of limitation. *Held*, that the amendment would relate back to the preceding applications, and execution of the decree was not time-barred. *Ajudhia Ram v. Muhammad Munir* (1) followed.

In this case Shambhu Prasad Dube and others obtained a decree against Ishar Dat and others on the 25th of November 1885. This was an *ex parte* decree, and was set aside on application by the judgment debtors under section 108 of the Code of Civil Procedure. The decree-holders, however, obtained another decree in the same suit on the 21st of September 1886. Three applications for execution were filed, namely, on the 21st of January 1889, on the 14th of November 1891, and on the 14th of November 1894; but in each application the decree sought to be executed was described as the decree of the 25th of November 1885. Upon the third application—but apparently not before—the judgment-debtors took objection that the decree sought to be executed, namely, the decree of the 25th of November 1885 was time-barred. The representative of the original decree-holders applied for leave to amend his application, and the amendment prayed for was made on the 23rd of March 1895. The application for execution was allowed, subject to the applicant's filing a certificate of succession within one month. From this order the judgment-debtors appealed, and the lower appellate Court

\* Second Appeal No. 577 of 1896, from a decree of Pandit Bansi Dhar, Subordinate Judge of Gorakhpur, dated the 29th April 1896, reversing a decree of Babu Dayanath, Munsif of Gorakhpur, dated the 7th May 1895.

(1) Weekly Notes, 1893, p. 112.

(Subordinate Judge of Gorakhpur) allowed the appeal and dismissed the application for execution. The decree-holder thereupon appealed to the High Court.

Munshi *Jwala Prasad*, for the appellant.

Mr. *H. C. Niblett*, for the respondents.

BLAIR and AIKMAN, JJ.—This is the appeal of a decree-holder. The sole point urged upon us is one of limitation. It has been found that the application before the Court below was an application not made within three years of a previous legal application. The facts are these. An *ex parte* decree was obtained by the present decree-holder on the 25th November, 1885. That decree was subsequently set aside. Another decree, however, was made in favour of the decree-holder on the 21st September, 1886. That was then his only extant decree, the only one therefore capable of execution, and, we cannot doubt, the one he wished to execute. He made his first application on the 21st January, 1889, within the three years' period, but, we are informed by Mr. *Niblett*, specified in his application the date November 25th, 1885, as being the date of the decree sought to be executed. Assuming that application to be a good one in point of law, the second application made on the 14th November, 1891, would have been in point of time a good application. We are told, however, that the second application repeated the mistake as to the date of the decree. The third application was made on the 14th of November, 1894, just therefore within time, were there no other objection. That application also described the decree as of the 25th of November, 1885. The mistake in regard to the date of the decree passes through all these applications. Upon the third application the judgment-debtor took objection, that the decree sought to be executed, to wit, the decree of the 25th of November, 1885, was time-barred. The decree-holder applied for amendment by substituting the correct date of the only extant decree held by him against the judgment-debtor. The amendment was allowed after the lapse of the three years. Mr. *Jwala Prasad* invites us to say that the lower appellate Court was wrong in ruling that the

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decree in relation to which the application was made was no longer capable of execution. He suggests that there never could have been any doubt as to the intention of the appellant, and it appears there could never have been any doubt in the minds of the judgment-debtors, as to the decree which was intended to be executed. He suggests, therefore, that the amendment was properly and rightly made and relates back to the date of the original informal application. In support of his contention he cites the judgment of this Court in *Ajudhia Ram v. Muhammad Munir* (1). It is there ruled that an application having once been admitted the date of a subsequent amendment would not by reason of such amendment become the date of the application. We approve of that ruling, and therefore hold that the third application was within time. Until the date of present application we are not aware of any objection taken by the judgment-debtors to the previous applications upon the ground of the erroneous date being specified as the date of the decree.

We therefore allow this appeal, and set aside the order of the lower appellate Court upon the preliminary point, but without costs, as it has arisen through the mistake of the decree-holder. We remand the case under section 562 of the Code of Civil Procedure for the decision of the remaining issues contained in the memorandum of appeal to the lower appellate Court.

*Appeal dismissed and cause remanded.*

*Before Mr. Justice Blair and Mr. Justice Aikman.*

SADA SHANKAR AND ANOTHER (DEFENDANTS) v. BRIJ MOHAN DAS  
(PLAINTIFF)\*

*Act No. IX of 1887 (Provincial Small Cause Courts' Act) Section 23—Civil Procedure Code Section 586—Suit of the nature cognizable by Courts of Small Causes.*

A suit is none the less a suit cognizable by a Court of Small Causes because that Court may have exercised the discretion conferred on it by section 23 of

\* Second Appeal No. 576 of 1896 from a decree of Babu Nil Madhub Rai, Subordinate Judge of Benares, dated the 2nd May 1896, confirming a decree of Maulvi Mubarak Husain, Munsif of Benares, dated the 19th September 1895.