

section 320 as amended by Act No. VII of 1883 does not take away the jurisdiction of any Court other than the Court referred to in it. If the execution of the decree had taken place in the Civil Court which transmitted it to the Collector, a suit of the nature of the present suit would, under the Full Bench ruling in *Diwan Singh v. Bharat Singh* (1), have been maintainable. The fact that the Collector exercises the powers which the Civil Court could have exercised but for the provisions of section 320 and the rules framed under it cannot deprive the ordinary Civil Courts of the jurisdiction to entertain such a suit. For the above reasons our answer to the reference is that the suit is maintainable.

Both the parties consent that this appeal be decided by this Bench. As the only point which really arises in this appeal was the plea which has been disposed of by the above decision and the other pleas in the memorandum of appeal have been abandoned, the result is that this appeal fails and is dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Burkitt and Mr. Justice Dillon.

GIRDHAR DAS AND OTHERS (DECREE-HOLDERS) v. HAR SHANKAR PRASAD (JUDGMENT-DEBTOR).^{*}

Execution of decree—Limitation—Civil Procedure Code, section 326—Execution as to immovable property of judgment-debtor stayed by reason of the property being in charge of the Collector.

The plaintiffs obtained in 1874 a decree for money against the defendant. In 1879, by an order under section 326 of the Code of Civil Procedure, the immovable property of the judgment-debtor was placed under the management of the Collector. Before this order was made, and during the period when the judgment-debtor's property was in charge of the Collector, various applications for execution were made by the decree-holders. Finally, in 1896, about

* First Appeal No. 149 of 1897 from a decree of Babu Nilmadhub Rai, Subordinate Judge of Benares, dated the 27th March 1897.

(1) I. L. R., 3 All., 206.

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ten years after the last preceding application, the decree-holders applied for execution of their decree shortly after the property had been released by the Collector. *Held* that as regards the immovable property of the judgment-debtors, against which execution was sought, the application was not barred by limitation, inasmuch as the decree-holders had no remedy by execution against that property until the Collector's management had ceased.

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

Pandit *Baldeo Ram Dave* and *Babu Baidiya Nath Das*, for the appellants.

Munshi Ram Prasad, for the respondent.

BURKITT and DILLON, JJ:—This is an appeal against an order dismissing an application for a certificate of non-satisfaction of a decree which prayed that the decree be sent to the Court of the Judge of Ghazipur for execution. The admitted facts are these. The decree was passed in 1874, and several applications for execution were made respecting it down to October 1879. In October 1879, by an order passed under section 326 of the Code of Civil Procedure, the Collector of Ghazipur was authorised to provide for the satisfaction of decrees due and outstanding against the judgment-debtor, one Babu Har Shankar Prasad. Under the provisions of section 326 the Collector is armed with all the powers given by sections 320 to 325C, both inclusive, and all the provisions of those sections apply in such a case. The appellants here applied to the Collector to have satisfaction of their decree, but the request was refused, as will be seen from the case of *Girdhar Das v. The Collector of Ghazipur* (1). It is quite unnecessary here to discuss the reasons why the appellants' application for satisfaction of their decree was refused by the Collector. Suffice it to say that it was refused. The appellants appear to have made some subsequent applications in 1880 and 1886, the results of which we do not know. The present application was made in July 1896, that is, not long after the Collector had completed the duties imposed on him by sections 322 to 326. It was urged in the

(1) Weekly Notes, 1896, p. 69.

Court below that the application was time-barred, and the learned Subordinate Judge has affirmed that contention. In our opinion the decision appealed against is not correct. We have no doubt that under the last clause of the first paragraph of section 325A no Court could have issued any process of execution on the appellant's decree against any immovable property in the district of Ghazipur belonging to the judgment-debtor as long as it was in the hands of the Collector. It may be that execution might have issued against the person or movable property of the judgment-debtor, but with that we have no concern now. Turning now to the last paragraph of section 325A we find that, so long as the Collector is able to exercise any of the powers or duties imposed on him by sections 320 to 325C, which in this case was the period from October 1879 to March 1896, the period during which he exercised such powers shall be excluded from the period of limitation applicable to the execution of any decree affected by the provisions of section 325A in respect of any remedy of which the decree-holders have thereby, that is under this section, been temporarily deprived. Now we have no doubt that the decree in question here was affected by the provisions of section 325A, inasmuch as the last clause of the first paragraph of section 325A prevented a Civil Court in execution of a decree for money from issuing any process against the judgment-debtor's immovable property in the hands of the Collector. The decree in this case is a decree for money. It follows therefore that the decree-holders were thereby, that is by the last clause of the first paragraph of section 325A, temporarily deprived of remedy against the immovable property of their judgment-debtor in the district of Ghazipur. We think therefore that in respect of the property as to which they were temporarily deprived of their remedy, the decree-holders are now entitled to execution. But we desire to make it clear that the execution can be in respect only of the property referred to in the last clause of section 325A, that is to say, the property as to which their remedy for execution was

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temporarily withheld. We allow this appeal. We set aside the decree of the lower Court with costs, and we direct that Court to issue a certificate of non-satisfaction if the decree has not been satisfied. The appellants will have their costs in this Court.

Appeal decreed.

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April 22.

Before Mr. Justice Banerji and Mr. Justice Aikman.

HAMID-UD DIN (JUDGMENT-DEBTOR) v. KEDAR NATH (DECREE-HOLDER).^{*}
Act No. IV of 1882 (Transfer of Property Act) section 90—Application for a decree over against non-hypothecated property—Balance legally recoverable—Limitation.

On an application under section 90 of the Transfer of Property Act, 1882, the time to be looked at in considering whether the balance sought to be recovered is legally recoverable from the mortgagor is the date of the institution of the suit and not the date of the making of the application under section 90. *Bageshri Dial v. Muhammad Naqi* (1) referred to.

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

Mr. *Amir-ud-din* for the appellant.

Mr. *Abdul Majid* for the respondent.

BANERJI and AIKMAN JJ.—This appeal arises out of an application for a decree under section 90 of Act No. IV of 1882. The judgment-debtor is the appellant before us, and the grounds taken by him are two:—first, that the application was barred by limitation, and secondly, that the matter is *res judicata* in consequence of the decree passed in the original suit. The suit was one for sale upon a mortgage of the 16th of September 1889. The amount secured by the mortgage was payable on demand, and the mortgage-deed was a registered instrument. The suit for sale was brought on the 29th of January 1891. The plaintiff asked for a decree not only for sale of the mortgaged property, but also against the person and the other property of the mort-

^{*} Second Appeal No. 165 of 1896 from an order of Pandit Raj Nath Sahib, Subordinate Judge of Moradabad, dated the 16th December 1895, reversing a decree of Babu Bhawani Chandar Chakravarti, Munsif of Sambhal, dated the 7th September 1895.