1898

CHUNNI LAL v. HARNAM DAS.

Full Bench, we hold that an application for an order under section 89 of the Transfer of Property Act is an application to which article 179 of the second schedule to the Indian Limitation Act, 1877, applies, and consequently, having regard to section 4 of the Act, the application was rightly dismissed by the first Court. If we were to hold that there was no limitation in such a case the decree-holder might postpone without loss of any rights his application under section 89 for fifty years after the date when he obtained his decree under section 88 of the Transfer of Property Act, as there would be nothing in the Limitation Act to bar his application, and section 230 of the Code of Civil Procedure would not apply. We allow this appeal with costs in this Court and in the Court below, and set aside the order under appeal, dismiss the appeal to the Court below, and restore and affirm the decree of the first Court.

Appeal decreed.

1898
February 9.

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

DAYA KISHAN (OPPOSITE PARTY) v. NANHI BEGAM AND OTHERS (PETITIONERS).*

Execution of decree—Limitation—Act No. XV of 1877 *(Indian Limitation Act), Schedule ii, Article* 179*—Application to the proper Court—Civil Procedure Code, section* 206.

An application under section 206 of the Code of Civil Procedure does not give a fresh starting point to limitation and cannot be regarded as an application to the proper Court to take a step in aid of execution. *Kishen Sahai* v. *The Collector of Allahabad* (1), *Tarsi Ram* v. *Man Singh* (2) and *Kallu Rai* v. *Fahiman* (3) referred to.

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

Babu *Jogindro Nath Chaudhri*, for the appellant.

Munshi *Ghulam Mujtaba*, for the respondents.

EDGE, C. J. and BANERJI J.—This appeal arises out of proceedings taken for the execution of a decree. A decree for sale

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* First Appeal No. 231 of 1897, from an order of Maulvi Muhammad Siraj-ud-din Ahmad, Subordinate Judge of Agra, dated the 22nd May 1897.

(1) I. L. R., 4 All., 137. (2) I. L. R., 8 All., 492.
(3) I. L. R., 13 All., 124.

was made under section 88 of the Transfer of Property Act, 1882, on the 31st of March 1891. An order absolute for sale was made on the 17th of December 1892, under section 89 of that Act. On the 23rd of January 1893, an application for execution was made. On the 1st of July 1893, the judgment-debtor paid into Court the amount decreed, which included costs. On the 5th of July 1893, the decree-holder, having found that by the judgment he was entitled to a sum of about Rs. 1,000 more than the decree had given him, applied under section 206 of the Code of Civil Procedure to have the decree brought into accordance with the judgment For some reason best known, if known at all, to the Judge to whom that application was made, he shelved the application on the 18th of November 1893. On the 28th of November 1895, the decree-holder made a second application under section 206 to the same effect as the previous one, and on the 25th of July 1896, the decree was brought into accordance with the judgment. The decree-holder delayed making his next application until the 17th of March 1897. It was for execution of the decree as amended. That application was dismissed on the ground that it was barred by limitation. From the order dismissing that application this appeal has been brought. Unless the decree-holder is entitled to call in aid his applications of the 5th of July 1893, and the 28th of November 1895, as applications to the proper Court to take a step in aid of the execution of the decree, execution of the decree is barred by limitation under article 179 of the second schedule to the Indian Limitation Act, 1877, as the last application to excute the decree was that of the 23rd of January 1893.

In *Kishen Sahai* v. *The Collector of Allahabad* (1) it was held that an application under section 206 of the Code of Civil Procedure to bring a decree into accordance with the judgment was substantially an application for a review of judgment and gave, under section 167 of schedule ii of Act No. IX of 1871, a fresh starting point for limitation. We cannot regard

(1) I. L. R., 4 All., 137.

1898

DAYA KISHAN v. NANHI BEGAM.

proceedings under section 206 of the Code as of the same nature in any respect as proceedings under section 623 of the Code. In the former case, namely, under section 206, the correctness of the judgment is not questioned; it is assumed; but the jurisdiction arises from the fact that the decree as drawn up and signed is not in accordance with the judgment. In the latter case, namely, under section 623, not only the correctness of the decree, but the correctness of the judgment is questioned, and, if the application under section 623 is allowed, a re-hearing of the suit or appeal to which it refers becomes necessary. In the former case there is no re-hearing. That part of the decision in *Kishen Sahai* v. *The Collector of Allahabad* to which we have referred was explained by Straight, J., in *Kallu Rai* v. *Fahiman* (1) on the ground that, though ostensibly the application in *Kishen Sahai* v. *The Collector of Allahabad* had been made under section 206 of the Code, the proceedings which were taken were proceedings which could only have been taken under section 623 of the Code. We need not consider whether that explanation is correct or not. The decision in *Kallu Rai* v. *Fahiman* shows that an application under section 206 of the Code of Civil Procedure does not give a fresh starting point to limitation, and cannot be regarded as an application to a proper Court to take a step in aid of execution. That this is so is obvious from a consideration of article 179, clause (4) of the second schedule to Act No. XV of 1877. The application under that clause must be one in accordance with law made to "the proper Court" for execution or to take some step in aid of execution of the decree. By explanation II to article 179 "proper Court" means the Court whose duty it is to execute the decree. The Court executing a decree may or may not be the Court which would have jurisdiction to take action on an application under section 206 of the Code, and, even if it was the Court which passed the decree, its functions as a Court executing the decree are not the same as its functions were as the Court making the

(1) I. L. R., 13 All., 124.

decree. In executing the decree the Court executing it must take the decree as it finds it. It cannot amend the decree or alter it in any way. It is bound of course to construe the decree. The decree in execution may be the decree of the High Court, and the proper Court to execute that decree may be the Court of the Munsif by whom the suit was first decided. The Munsif could not act under section 206 in respect of a decree made by an appellate Court, and he would be bound, as the Court executing the decree, to execute the decree whether he approved of it or not, even if the decree had been one made by himself. For these reasons we are of opinion that the applications of the 5th of July 1893, and the 28th of November 1895, were not applications made to the proper Court within the meaning of article 179 to take a step in aid of execution of the decree, and consequently that execution of the decree was barred by limitation. It was decided, and we think rightly, in *Tursi Ram* v. *Man Singh* (1) that an application under section 206 of the Code does not give a fresh starting point for limitation. We dismiss this appeal with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS *v.* MUHAMMAD SHAH KHAN AND ANOTHER.*

Act No. XLV of 1860 (*Indian Penal Code*), *section* 218—*Public servant framing incorrect record—Injury to the public—Police officer framing a false report.*

A report of the commission of a dacoity was made at a thana. The Police officer in charge of the thana at first took down the report which was made to him, but subsequently destroyed that report and framed another and a false report—of the commission of a totally different offence—to which he obtained the signature of the complainant, and which he endeavoured to pass off as the original and correct report made to him by the complainant.

Held that on the above facts the Police officer was guilty of the offences punishable under section 204 and section 218 of the Indian Penal Code.

* Criminal Appeal No. 1556 of 1897.

(1) I. L. R., 8 All., 492.