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KAMRAKH  
NATH  
v.  
SUNDAR  
NATH.

Lordships of the Privy Council in *Rajah Amir Hassan Khan v. Sheo Bakhsh Singh* (1) that where a Court has jurisdiction to decide a question, and does decide it, the High Court cannot under section 622 of the Code of Civil Procedure interfere merely because the Court has wrongly decided the question. There is no question in this case of illegality or material irregularity. The result is that the Subordinate Judge had jurisdiction to decide this question and did decide it. He was not guilty of any illegality or irregularity, and it is unnecessary to consider whether he decided the question rightly or wrongly. We cannot interfere. We dismiss this application with costs.

*Application dismissed.*

## APPELLATE CIVIL.

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*February 7.*

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

CHUNNI LAL (JUDGMENT-DEBTOR) v. HARNAM DAS (DECREE-HOLDER).\*

*Execution of decree—Act No. IV of 1882 (Transfer of Property Act), section 89—Order absolute for sale—Limitation—Act No. XV of 1877 (Indian Limitation Act) Schedule ii Article 179.*

An application for an order absolute for sale under section 89 of the Transfer of Property Act, 1882, is an application to which article 179 of the second schedule to the Indian Limitation Act, 1877, applies. *Oudh Behari Lal v. Nageshar Lal* (2) referred to. *Ranbir Singh v. Drigpal Singh* (3) overruled.

THIS appeal arose out of an application for an order absolute for sale under section 89 of the Transfer of Property Act, 1882. The respondent obtained a decree for sale under section 88 of the Transfer of Property Act on the 30th of March 1893 against the appellant. By the decree six months were allowed for payment of the decretal sum. That period expired on the 30th of September 1893. On the 10th of March 1897, the respondent decreeholder applied for an order for sale under section 89 of the

\* First Appeal No. 82 of 1897, from an order of Babu Baijnath, Subordinate Judge of Shahjahanpur, dated the 17th June 1897.

(1) L. R., 11 I. A., 237. (2) I. L. R., 13 All., 278.

(3) I. L. R., 16 All., 23.

Transfer of Property Act. That was the first application made for execution of the decree or to take a step in aid of the execution of the decree. The Court of first instance (Munsif of Bisauli) held that the application was barred by limitation. On appeal by the decree-holder the lower appellate Court (Subordinate Judge of Sháhjahánpur) held, following the decision in *Ranbir Singh v. Drigpal* (1), that the application was not barred, and, reversing the decree of the Munsif, made an order of remand under section 562 of the Code of Civil Procedure. From that order of remand the judgment-debtor appealed to the High Court.

Munshi *Ram Prasad*, for the appellant.

Mr. *D. N. Banerji*, for the respondent.

EDGE, C. J. and BANERJI, J.—On the 30th of March 1893 the respondent here obtained a decree under section 88 of the Transfer of Property Act, against the appellant here. By the decree six months were allowed for payment of the decretal sum. That period expired on the 30th of September 1893. On the 10th of March 1897, the respondent decree-holder applied for an order for sale under section 89 of the Transfer of Property Act. That was the first application made for the execution of the decree or to take a step in aid of the execution of the decree. The first Court held that the application was barred by the Indian Limitation Act, 1877, and dismissed it. On appeal the lower appellate Court held, following the decision in *Ranbir Singh v. Drigpal* (1) that there was no period of limitation provided for such an application, and set aside the order of the first Court and made an order under section 562 of the Code of Civil Procedure remanding the case. From that order of remand this appeal has been brought. A Full Bench of this Court has held in *Oudh Behari Lal v. Nageshar Lal* (2) that an application for an order under section 89 of the Transfer of Property Act is a proceeding in execution of decree and subject to the rules of procedure governing such matters. Applying the decision of the

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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.*

*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 *Kalla 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

\* 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.

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