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November 13.

Before Mr. Justice Know and Mr. Justice Banerji.

SHUJA ALI KHAN (JUDGMENT-DEBTOR) v. RAM KUAR (DECREE-HOLDER).*

Civil Procedure Code, section 596—Appeal to Her Majesty in Council—Substantial question of law—Succession certificate not produced at the proper time—Act No. VII of 1889 (Succession Certificate Act), section 4.

The representative of a decree-holder applied for execution of the decree without producing before the Court a certificate of succession as required by Act No. VII of 1889, section 4. The Court to which the application was made granted execution. The judgment-debtor appealed to the High Court, by which the order of the lower Court was sustained upon production before it (the High Court) of the necessary certificate of succession. *Held* that an objection that the said application for execution was improperly granted by reason of the non-production of the succession certificate before the lower Court did not raise a "substantial question of law" within the meaning of section 596 of the Code of Civil Procedure, so as to warrant the High Court in granting leave to appeal to Her Majesty in Council.

THIS was an application for leave to appeal to Her Majesty in Council from a decree of the High Court passed in an appeal under section 10 of the Letters Patent from the judgment of a single Judge of the Court. The opposite party obtained a decree against the applicant on the 28th of June 1878 for Rs. 16,477. Application was made to the Subordinate Judge of Moradabad for execution of that decree on the 4th of August 1890, which application was allowed. Against the order allowing that application an appeal was presented to the High Court. The appeal was dismissed by a single Judge on the 6th of January 1896, and a further appeal under section 10 of the Letters Patent was dismissed by a Division Bench of the Court on the 21st of January 1897.

The grounds of appeal as set forth in the application under section 598 of the Code of Civil Procedure were as follows:—

- (1) Because the respondent's application for execution of decree was not entertainable, inasmuch as it was not accompanied by a succession certificate as required by section 4 of Act No. VII of 1887 (Succession Certificate Act).

- (2) Because all the proceedings relating to the execution of decree are manifestly opposed to the express provisions of section 4, clause 6, of Act No. VII of 1889. They are null and void.
- (3) Because such an application as filed by the respondent is of no effect and cannot be considered by the Court.
- (4) Because the decree sought to be executed is therefore barred by limitation.

Babu *Jogindro Nath Chaudhri* for the applicant.

KNOX and BANERJI, JJ.—This is an application for leave to appeal to Her Majesty in Council. The subject-matter of the appeal is valued above ten thousand rupees, but, as the decree appealed from affirmed the decision of the Court immediately below, we have to see before granting the certificate that the appeal, if admitted, would involve some substantial question of law. The grounds set out in the application do undoubtedly involve questions of law, but in our opinion the questions raised are not substantial questions of law. The question briefly put is whether this Court was right in affirming a decision of the Court below which granted execution without the production of a succession certificate, upon its being shown to this Court that such succession certificate had been obtained by the decree-holder before the order appealed from had been passed, and upon the certificate being produced in this Court before the appeal was determined. The objection of non-production of the certificate, though raised in the Court below, was not pressed before that Court, and the reason to our mind is obvious: the judgment-debtor knew of the existence of the certificate and saw no advantage in sustaining an objection which would at once be removed and would only lead to unnecessary delay. In his appeal to this Court again the judgment-debtor, the present applicant, did not raise the objection, and no doubt for the same reason. Whatever irregularity there was in the Court below was not an irregularity affecting the merits or jurisdiction of the Court to entertain the application

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for execution. It was cured by the production in the Court of the certificate which had already been obtained. No objection could have been taken if this Court in dealing with the appeal had set aside the order appealed from and directed the Court below to cause the production of the succession certificate and proceed to execution after the said production. Such a course would have been harassing, and needlessly harassing, both to the judgment-debtor and the judgment-creditor, and would have been a pure sacrifice to the observance of technicalities in proceedings. We hold that no substantial question of law is involved. We dismiss the application with costs.

Application dismissed.

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November 15.

Before Mr. Justice Banerji and Mr. Justice Aikman.

GOSWAMI RANCHOR LALJI (PLAINTIFF) v. SRI GIRDHARIJI*
(DEFENDANT.)*

Act No. XV of 1877 (Indian Limitation Act) Sch. II. Art. 47—Limitation—Criminal Procedure Code section 146—Suit for possession of property attached by a Magistrate under section 146.

Article 47 of the second schedule to Act No. XV of 1877 does not apply to a suit brought by one of the two claimants against the other to recover possession of property which has been attached by a Magistrate under the provisions of section 146 of the Code of Criminal Procedure. *Chuj Mull v. Khyratee* (1), and *Akilandammal v. Periasami Pillai* (2) referred to.

To such a suit as above Government is not a necessary party.

THE facts of this sufficiently appear from judgement of the Court.

Mr. D. N. Banerji, Babu Jogindro Nath Chaudri, Pandit Sundar Lal and Babu Satya Chandra Mukerji, for the appellant.

Messrs. T. Conlan and B. E. O'Connor, for the respondent.

BANERJI and AIKMAN, JJ.—The suit out of which this appeal has arisen was brought by the appellant to recover

* Second Appeal No. 828 of 1895 from a decree of H. G. Pearse Esqr., District Judge of Agra, dated the 22nd June 1895, reversing a decree of Babu Durjan Lal, Munsif of Muttra, dated the 25th February 1895.

(1) N.-W. P., H. C. Rep., 1868, p. 65.

(2) I. L. R., 1 Mad., 309.