

1897

HARDEO
SINGH
v.
NARPAT
SINGH.

The Court of first appeal should have dismissed the appeal to it. We allow this appeal with costs, and, setting aside the order of remand, we dismiss with costs the appeal to the lower appellate Court and restore and affirm the decree of the Court of first instance dismissing the suit with costs.

Appeal decreed.

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July 22.

REVISIONAL CIVIL.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Banerji.
SUNDAR SINGH (JUDGMENT-DEBTOR) v. DORU SHANKAR AND OTHERS
(DECREE-HOLDERS).*

Civil Procedure Code, section 622—Revision—Erroneous decision on point of limitation.

The fact that a Court having power to decide whether or not a certain matter was barred by limitation, wrongly decided that it was not barred and proceeded to deal with it affords no ground for revision under section 622 of the Code of Civil Procedure. *Amir Hassan Khan v. Sheo Baksh Singh (1)* and *Sarman Lal v. Khuban (2)* referred to.

In this case the decree-holders obtained a decree for money on the 2nd July 1884. On the 12th of April 1896 the decree-holders applied for a certificate under section 224 of the Code of Civil Procedure, and the certificate, having been prepared on the 2nd of July 1896, was received by the Court to which the decree was sent for execution on the 4th of July 1896. The decree-holders applied to that Court for execution on the 7th of July 1886. The judgment-debtors filed an objection to the effect that execution of the decree was time-barred. The Court (Munsif of Farrukhabad) disallowed the objection on the ground that the application for a certificate was made within time and the subsequent delay could not be imputed to the decree-holders. On appeal by the judgment-debtor, the Court of appeal (Subordinate

* Civil Revision No. 4 of 1897, against an order of Maulvi Muhammad Anwar Husain, Subordinate Judge of Farrukhabad, dated the 8th December 1896, confirming an order of Babu Bakhtawar Lal, Munsif of Farrukhabad, dated the 18th August 1896.

(1) I. L. R., 11 Calc., 6.

(2) I. L. R., 17 All., 422.

Judge of Farrukhabad) dismissed the appeal, agreeing with the Court below. Sundar Singh, one of the judgment-debtors, applied in revision to the High Court.

Munshi *Gulzari Lal*, for the applicant.

Babu *Jivan Chandar*, for the opposite parties.

EDGE C. J. and BANERJI J.—An application was made to transfer a decree for execution to another Court. An order for transfer was made and the certificate was duly transmitted. Thereupon the decree-holder applied to the Court to which the certificate had been sent for execution of the decree. Execution was in fact barred by that time by reason of section 230 of the Code of Civil Procedure. However, the Court held that section 230 could not be applied, as the application to transmit the decree had been made within time. As a matter of fact the Court was wrong. The making of an application to transmit the decree and the making of an order thereon did not suspend the operation of section 230. The Court made an order for execution. We are clearly of opinion that that order was wrong and in contravention of section 230 of the Code. But we are unable to distinguish the principle to be applied in this case from the principle applied by their Lordships of the Privy Council in *Amir Hassan Khan v. Sheo Baksh Singh* (1), and which was also applied by a Bench of this Court in *Sarman Lal v. Khuban* (2). Consequently we are reluctantly compelled to hold that we cannot entertain this application under section 622 of the Code of Civil Procedure to revise an order which in our opinion was bad in law, as the Court had jurisdiction to consider whether section 230 of the Code did not apply. We dismiss this application, but we make no order as to costs.

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SUNDAR
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Application dismissed.

(1) I. L. R., 11 Calc., 6,

(2) I. L. R., 17 All., 422,