

1887 prisoner. In default of payment he must suffer three months' rigorous imprisonment.

H. T. H.

Conviction upheld.

APPELLATE CIVIL.

Before Mr. Justice Mitter and Mr. Justice Beverley.

1887
h 16.

IN THE MATTER OF THE PETITION OF HUKUM CHAND ASWAL
(DECREE-HOLDER).

HUKUM CHAND ASWAL v. GYANENDER CHUNDER LAHRI, MINOR,
BY HIS GUARDIAN ABHOY CHUNDER BAGCHI
(JUDGMENT-DEBTOR).*

Bengal Act VIII of 1869, s. 58—Execution of decree—Suit for rent not brought under Bengal Act VIII of 1869—Decree of Court of foreign State—Civil Procedure Code, 1882, s. 434.

The law of limitation applicable to the execution of a decree of the Civil Court of Cooch Behar, for rent for a sum under Rs. 500 in a suit not brought under the Rent Act, is by s. 434 of the Civil Procedure Code, which gives the Courts in British India power to execute decrees passed by the Courts of a foreign State, s. 58 of Bengal Act VIII of 1869. That section is not confined to suits brought under that Act.

In this case the plaintiff obtained a decree for rent in the Civil Court of Cooch Behar on 23rd May, 1881. The decree was for rent and costs and amounted to Rs. 432-8-9. After execution had been applied for in Cooch Behar and partly obtained, the decree was transferred to the Rungpore district, and sent to the Munsiff of Gaibanda for execution after more than three years from the date of the decree. The Munsiff in August, 1885, held in an objection made to the decree on that ground, that it was barred by limitation under s. 58 of Bengal Act VIII of 1869, inasmuch as it was a decree for rent for less than Rs. 500, and more than three years had elapsed since the date of the decree. On appeal the Officiating Subordinate Judge of Rungpore affirmed the decision of the Munsiff and dismissed the appeal. The decree-holder appealed to the High Court on the ground that the Courts had erred in holding the execution of the application for Review in Miscellaneous Appeal No. 442 of 1885, and in the judgment of Mitter, J., and Grant, J., of this Court, dated the 4th April, 1886.

decree to be barred. The High Court (MITTER and GRANT, JJ.) dismissed the appeal, on the ground that there was no jurisdiction in the matter of the execution, and that the application for execution should have been dismissed on the ground that the Courts in British India have no power to execute a decree passed by the Court of a foreign State like Cooch Behar (1).

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An application for review of this decision was made by the decree-holder, on the ground that s. 434 of the Civil Procedure Code gave the Courts in British India power to execute it, and that, the suit not having been brought under the Rent Act, s. 58 of that Act was not applicable.

Baboo *Durga Mohan Dass* for the petitioners.

Baboo *Grija Sunkar Mazumdar*, *contra*.

The judgment of the Court (MITTER and BEVERLEY, JJ.) was as follows:—

This is an application to execute a decree under a certificate granted by a Civil Court in Cooch Behar with reference to a decree for arrears of rent. Section 434 of the Procedure Code is the section which gives the Courts in British India authority to execute such decrees. That section says: "The Governor-General in Council may, from time to time, by notification in the *Gazette of India*, declare that the decrees of any Courts situate in the territories of any Native Prince or State in alliance with Her Majesty, and not established by the authority of the Governor-General in Council, may be executed in British India as if they had been made by the Courts of British India." Therefore the decree must be executed as if it had been made by a Court in British India. The law of limitation which would be applicable to such execution proceedings would be the law which would be applicable to the decree if it had been passed in a Court in British India. The decree having been passed in a suit for arrears of rent, and the amount being under Rs. 500, we think that the lower Court was right in holding that the law of limitation applicable in this case is the law contained in s. 58 of the Rent Act. That section says: "No process of execution

(1) I. L. R., 13 Calc., 95.

1887 of any description whatsoever shall be issued on a judgment in any suit for any of the causes of action mentioned in ss. 27, 28, 29 or 30 of this Act, after the lapse of three years from the date of such judgment." It was contended before us that s. 58, Bengal Act VIII of 1869, only applies to suits instituted under Act VIII of 1869. The language of the section does not support this contention. The section says it shall apply to any "judgment in any suit for any of the causes of action mentioned in ss. 27, 28, 29 and 30 of the Act." That is not tantamount to saying that the suit itself must be under Act VIII of 1869. If it is a suit on any of the causes of action mentioned in the sections of the Act enumerated, it would come within the purview of s. 58; and there is no doubt that the present suit comes within the causes of action enumerated in the section. The judgment of the lower Court is therefore correct.

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We dismiss this appeal with costs and assess the hearing fee at Rs. 32.

J. V. W.

Appeal dismissed.

PRIVY COUNCIL.

P. C.*
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11 and 26.

SIMBHUNATH PANDE AND OTHERS (DEFENDANTS) v. GOLAP SINGH AND OTHERS (PLAINTIFFS).

[On appeal from the High Court at Calcutta.]

Sale in execution of decrees—Judgment-debtor's share in joint ancestral estate—Mitakshara law—Execution of decree by sale of such share—Rights of co-sharers not being parties to the decree or execution proceedings—Sale certificate.

The question was whether the whole estate belonging to a joint family, living under the Mitakshara, including the shares of sons or the share of their father alone, passed to the purchaser at a sale in execution of a decree against the father alone upon a mortgage by him of his right.

Held that, as the mortgage and decree, as well as the sale certificate, expressed only the father's right, the *prima facie* conclusion was that the purchaser took only the father's share, a conclusion which other circumstances—the omission on the part of the creditor to make the sons parties and the price paid—not only did not counteract but supported.

* *Present*: LORD WATSON, LORD FITZGERALD, LORD HOBBHOUSE, SIR B. PEACOCK and SIR R. COUCH.