1900

DEBI SAHAI v. SHEO SHANKER LAL.

"construe this passage as conferring upon a woman taking by "inheritance from a male a *stridhan* estate transmissible to her "own heirs." As the text in the Mitakshara refers to acquisitions by inheritance in general, the insertion by their Lordships of the words "from a male" in the passage above cited from their judgment is significant, and, as said above, is an indication that the views of the Privy Council are not inconsistent with the opinion expressed by Mr. Mayne.

In the Bombay Presidency, save in the case of a widow succeeding to her husband, it is held that property which a woman takes by inheritance is her *stridhan*, and passes to her heirs.

In this state of the authorities, and in the absence of any authority to the contrary, which is binding upon us, we arrive at the conclusion that the estate which the mother of the plaintiffs inherited from her mother was *stridhan*, governed by the special rules of devolution applicable to this species of property. The sisters of the plaintiffs therefore and not the plaintiffs are entitled to succeed to it. We accordingly sustain the first ground set forth in the memorandum of appeal, and holding that the plaintiffs are not competent to maintain the suit, set aside the decree of the lower Court and dismiss the suit with costs in both Courts.

Appeal decreed.

1900.
May 21.

Before Mr. Justice Banerji.

THAKUR RAM (DECREE-HOLDER) *v.* KATWARU RAM (JUDGMENT-DEBTOR).*

Execution of decree—Limitation—Act No. XV of 1877*—(Indian Limitation Act), Sch. ii, Art.* 179 (4)*—Application to take some step in aid of execution—Payment of process fee.*

The mere payment of process fee for the issue of notice for the purpose of an inquiry under s. 287 of the Code of Civil Procedure, or the payment of costs for the issue of a proclamation of sale, unaccompanied by any application, will not operate to give a fresh starting point for limitation within the meaning of art. 179 (4) of the second schedule to the Indian Limitation Act, 1877. *Har Sahai* v. *Sham Lal* (1) and *Duarkanath Appaji* v. *Anandrao Ramchandra* (2) followed. *Barmha Nand* v. *Sarbishwara Nand* (3) distinguished. *Radha Prosad Singh* v. *Sundar Lall* (4) dissented from.

*Second Appeal No. 772 of 1899, from a decree of Munshi Achal Behari, Officiating Additional Subordinate Judge of Gházipur, dated the 23rd June 1899, reversing a decree of Chaudhri Saiyid Abdul Husain, Munsif of Gházipur, dated the 11th April 1899.

(1) Weekly Notes, 1900, p. 88.
(2) (1894) I. L. R., 20 Bom., 179.
(3) Weekly Notes, 1883, p. 247.
(4) (1883) I. L. R., 9 Calc., 644.

1900

THAKUR RAM v. KATWARU RAM.

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

Mr. *Abdul Raoof* and Maulvi *Muhammad Ishaq*, for the appellant.

Pandit *Madan Mohan Malaviya*, for the respondent.

BANERJI, J.—This appeal arises out of the execution of a decree passed under section 88 of the Transfer of Property Act on the 19th November, 1890. An order absolute was made under section 89 on the 11th September, 1894. The first application for execution was presented on the 29th November, 1895. The present application was made on the 7th December, 1898. The question is, whether the application last mentioned was within time. The lower appellate Court has held that it was barred by limitation, and it is contended that this decision is incorrect. The learned vakil for the appellant relies on the fact that on the 24th December 1895, process fee was deposited for the issue of a notice for the purpose of an inquiry under section 287 of the Code, and also upon the fact that on the 8th July 1896, costs for the issue of a proclamation of sale were deposited. He contends that limitation should be computed from these dates, and that as the present application was made within three years from both of these dates, it was not time-barred.

Under cl. 4 of art. 179 of the second schedule to the Indian Limitation Act, 1877, the three years' limitation must be computed from the date of applying in accordance with law for execution of the decree, or to take some step in aid of execution. It is clear that under that article a fresh start for the computation of limitation is allowed, not from the date of taking a step in aid of execution, but from the date of applying to take some step in aid of execution. The record of this case shows that no application, either oral or in writing, was made when the deposit of process fee and of costs of sale was made on the 24th December 1895, and the 8th July, 1896. The mere fact of the making of the deposit cannot amount to the making of an application within the meaning of art. 179 (4). The learned vakil for the appellant relies on the ruling of this Court in *Barmha Nand* v. *Sarbishwara Nand* (1). In that case what the learned Judges said was

(1) Weekly Notes, 1883, p. 247.

1900

THAKUR RAM v. KATWARU RAM.

that "the decree-holder applied within the period of limitation for steps to be taken in execution when he deposited the necessary fees for notices and advertisements of sale." From this statement it seems that some application was made in that case. In the recent case of *Har Sahai* v. *Sham Lal* (1), it was held that payment into Court of postage for the purpose of getting a record forwarded to another Court in a case where the transfer of a decree for execution had been ordered under section 223 of the Code of Civil Procedure did not amount to an application to the Court to take a step in aid of execution. In *Dwarkanath Appaji* v. *Anandrao Ramchandra* (2), it was held that the mere deposit of process fee for the service of notice was not an application within the meaning of art. 179, cl. (4), which could save the operation of limitation. The case of *Radha Prosad Singh* v. *Sunder Lall* (3) is no doubt an authority in favour of the appellant's contention, but in that case the learned Judges overlooked the fact that under cl. (4) of art. 179 there must be an application to take a step in aid of execution in order to save the operation of limitation, and that the mere fact of a step being taken in aid of execution cannot have that effect. I am therefore unable to agree with the ruling last mentioned. As in this case the decree-holder did not apply for execution or to take a step in aid of execution within three years before the date of his present application for execution, that application was time-barred, and this appeal must fail: it is dismissed with costs.

I may observe that the lower appellate Court was wrong in stating that notice under section 248 was issued on the 24th December, 1895. If that date had been correct the present application might have been within time; but, as a matter of fact, the order for the issue of notice was made on the 30th November 1895, and the notice was actually issued on the second December, 1895, and the present application was made beyond three years from both these dates.

Appeal dismissed.

(1) Weekly Notes, 1900, p. 88. (2) (1894) I. L. R., 20 Bom., 179.
(3) (1883) I. L. R., 9 Calc., 644.