

1904

GANGA  
GHULAM  
v.  
TAPESHRI  
PRASAD.

and if third parties having no interest in that property chose to amuse themselves by executing mortgage-deeds or sale-deeds or the like of that property, it is no concern to the real owner until they do some act which puts his title in danger, as here, *e.g.*, by advertising the property for sale. When that occurs the plaintiff is entitled to come in with a suit under section 42 of the Specific Relief Act. For the above reasons we must allow this appeal and set aside the appellate decree of the District Judge. We remand the record to him under section 562 of the Code of Civil Procedure, as he has decided the appeal on a preliminary point, and we direct that the appeal be replaced on the file of pending appeals and be decided according to law. The appellant will have his costs of this appeal in any event.

*Appeal decreed and cause remanded.*

1904

May 9.

*Before Mr. Justice Know and Mr. Justice Aikman.*

NAND KISHORE (OBJECTOR) v. SIPAHI SINGH (DECREE-HOLDER).<sup>\*</sup>  
*Act No. XV of 1877 (Indian Limitation Act), schedule II, article 179 - Execution of decree—Limitation—Application to take some step in aid of execution—Appeal from order in execution proceedings.*

The prosecution of an appeal from an order made in the course of proceedings in execution of a decree cannot be looked on as an application in accordance with law to the proper Court for execution or to take some step in aid of execution within the meaning of article 179 of the second schedule to the Indian Limitation Act, 1877. *Kristo Coomar Nag v. Mahabat Khan* (1) followed.

In this case one Sipahi Singh, on the 17th August 1896, obtained a decree under section 88 of the Transfer of Property Act, 1882, for the sale of two houses and a *diwan-khana*. This decree was followed on the 14th of April 1897 by an order absolute for sale. On the 26th of May 1897 the decree-holder applied for sale of the property, and in his application asked that the two houses should be sold first and afterwards the *diwan-khana*. The owners of the houses objected, and that

<sup>\*</sup> Second Appeal No. 1024 of 1903, from a decree of T. C. Piggott, Esq., District Judge of Moradabad, dated the 13th of July 1903, confirming a decree of Babu Mata Prasad, Subordinate Judge of Moradabad, dated the 27th of January 1903.

1904

---

 NAND  
KISHORE  
v.  
SIPAH  
SINGH.

objection was disallowed on the 10th of July 1897. Against this order the owners of the houses appealed. After the appeal was filed, the Court executing the decree, by its order of the 19th of July 1897, struck off the decree-holder's application for execution "for the present." On the 26th of July 1898 the District Judge allowed the appeal of the owner of the houses as to the order in which the property should be sold. The decree-holder appealed to the High Court, but his appeal was dismissed on the 9th of January 1901. On the 25th of January 1902 the decree-holder applied again for execution, praying that his application might be considered as in continuation of previous execution proceedings. One of the judgment-debtors objected that the application for execution was barred by limitation, but his objection was overruled by the Court executing the decree (Subordinate Judge of Moradabad), and an appeal preferred by him was dismissed by the District Judge. The objecting judgment-debtor thereupon appealed to the High Court.

Babu *Jogindro Nath Chaudhri* (for whom Babu *Satya Chandra Mukerji*), for the appellant.

Pandit *Moti Lal Nehru* (for whom Babu *Lalit Mohan Banerji*), for the respondent.

KNOX and AIKMAN, JJ.—On the 17th of August 1896 the respondent to this second appeal obtained a decree under section 88 of the Transfer of Property Act for the sale of two houses and of a *diwan-khana*. This was made absolute by an order dated the 14th of April 1897. On the 26th of May 1897 the decree-holder applied for sale of the property, and in his application he asked that the two houses should be sold first and then the *diwan-khana*. The owners of the houses objected, and that objection was disallowed on the 10th of July 1897. Against this order the owners of the houses appealed. After the appeal was filed the Court executing the decree recorded an order on the 19th of July 1887, setting forth that the record had been called for by the appellate Court, that there was no knowing when the appeal will be decided, that proclamation of sale had been issued under section 287 of the Code of Civil Procedure, and concluding with the words

1904

---

 NAND  
 KISHORE  
 v.  
 SIPAHT  
 SINGH.

“it is therefore ordered that for the present this case be struck out from the list of pending applications.” This order was signed by the pleader for the decree-holder, respondent. On the 26th of July 1893 the learned Judge sustained the appeal of the owners of the houses as to the order in which the property should be sold. The decree-holder appealed to this Court, and this Court dismissed his appeal on the 9th of January 1901. The present application was presented on the 25th of January 1902, and the decree-holder prayed that it should be considered as in continuation of the previous proceedings. The present application asked that the property should be sold in the order determined by this Court, *viz.*, that the *diwan-khans* should be sold first and after that the houses. One of the judgment-debtors objected that the application was barred by limitation. The Subordinate Judge overruled this objection, and his order was confirmed in appeal by the learned Judge. The judgment-debtor comes here in second appeal.

The learned Judge held that the decree-holder's appearance in this Court in 1901 in support of his appeal was a step in aid of execution. We presume that he considered that this brought the case within the fourth head of article 179 of the second schedule to the Indian Limitation Act. In this we are unable to follow him. The prosecution of an appeal in this Court cannot, in our opinion, be looked on as an application in accordance with law to the proper Court for execution or to take some step in aid of execution. In the case of *Kristo Eoomar Nag v. Mahabat Khan* (1) the same view was taken; see the remarks which were made in the judgment at page 597. Though we cannot agree with the lower Appellate Court in the view which it took, we are of opinion that the appeal must fail. The proceedings in execution which were in progress when the record was taken away from the executing Court were by order of the executing Court temporarily suspended pending the final disposal of the objections raised by the judgment-debtor. Such, in our opinion, is the spirit and purport of the order of the 19th of July 1897. We agree with the

Subordinate Judge that the present application is not a fresh application, but a continuation of the proceeding which had been temporarily stayed by the Court in consequence of the objections of the owners of the houses. The appeal fails, and is dismissed with costs.

1904

NAND  
KISHORE  
v.  
SIPARI  
SINGH.

*Appeal dismissed.*

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkill.*

THE MAHARAJA OF BENARES (PLAINTIFF) v. RAMKUMAR MISIR  
AND OTHERS (DEFENDANTS).\*

1904  
May 9.

*Hindu law—Joint Hindu family—Security—Liability of sons under an engagement by their father to be answerable for the payment of rent by a third person.*

*Held* that under the Hindu law the sons in a joint Hindu family are liable as such for the due fulfilment of an engagement entered into by their father as surety for the payment of rent by a lessee in accordance with the terms of his lease. *Tukarambhat v. Gangaram Mulchand Gujar* (1), and *Sitaramayya v. Venkatramanna* (2) followed.

THE facts of this case are as follows:—

In the year 1888 the Maharaja of Benares gave a lease of four villages for a term of nine years (1296 to 1304 Fasli), at a rental of Rs. 1,385 per annum, to one Ram Prasad. To secure the due payment of the rent payable under this lease a surety bond was entered into by the lessee and two others—Mahabir and Ram Harakh. Each of the sureties hypothecated certain property, and it was provided in the bond that “in case the lessees are in arrears and the sureties fail to pay the amount, the plaintiff shall have the power to recover the money payable to him from the persons of the sureties and by means of attachment and auction sale of the property hypothecated in the deed of surety, or in whatever manner he may realize it.” The rent for the years 1301 and 1302 Fasli being due and unpaid, the Maharaja instituted a suit in the Rent Court for recovery of the arrears, and obtained a decree for Rs. 2,348 odd. Failing to realize that sum by execution of his decree in the Rent Court, he instituted the

\* Second Appeal No. 1032 of 1902 from a decree of J. Saunders, Esq., District Judge of Benares, dated the 29th of August 1902, modifying a decree of Maulvi Muhammad Sirajuddin, Subordinate Judge of Benares, dated the 10th of June 1902.

(1) (1898) I. L. R., 23 Bom., 454. (2) (1898) I. L. R., 11 Mad., 373.