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the order appealed against was made in proceedings relating to the execution of the decree held by the respondents in which the attachment was made. To that decree, as we have already said, the appellant is not a party, nor is he the representative of a party. Therefore he has no right to prefer this appeal. We accordingly dismiss it with costs.

Appeal dismissed.

1903

July 8.

Before Mr. Justice Burkitt.

RAM NARAIN AND OTHERS (DEFENDANTS). *v.* KAMTA SINGH AND ANOTHER (PLAINTIFFS).*

Act No. XV of 1877 (Indian Limitation Act), schedule II, articles 110 and 116—Suit to recover rent on a registered lease—Limitation.

Held that a suit for the recovery of rent based upon a registered lease is governed as to limitation not by article 116 but by article 110 of the Indian Limitation Act, 1877. *Umash Chunder Mundul v. Adarmoni Dasi* (1) dissented from.

THIS was a suit on a registered lease dated the 15th of March 1884, executed by the predecessor in title of the plaintiffs, to recover the rent for six years of an indigo factory. The defendants were the representatives of the original lessees excepting two, whose proportionate share of the rent the plaintiffs admitted to have been paid. The Court of first instance (Munsif of Phaphund) decreed the claim in part. Against this decree both the plaintiffs and some of the defendants appealed. The lower appellate Court (Subordinate Judge of Mainpuri) allowed the plaintiffs' appeal and decreed the claim in full, but dismissed the appeal of the defendants. The defendants appeal to the High Court.

Mr. R. Malcomson, for the appellants.

Babu Parbati Charan Chatterji, for the respondents.

BURKITT, J.—This is a suit to recover the rent for six years of an indigo factory. A lease is produced dated the 15th of March 1884, executed by the predecessor in title of the plaintiffs, leasing this land at a rental of Rs. 46 per annum, in which it was mentioned that the lessees were interested in the factory

* Second Appeal No. 1133 of 1901, from a decree of Pandit Raj Nath Sahab, Subordinate Judge of Mainpuri, dated the 26th of August 1901, modifying decree of Babu Keshab Deb, Munsif of Mainpuri, dated the 27th of May 1901.

1903

 RAM NARAIN
 v.
 KAMTA
 SINGH.

in certain proportions, and the lease provided that they were liable to pay rent to the lessor in those proportions. The present suit has been instituted to recover the rent, as I have said above, of six years against the representatives of the original lessee, excepting only two, as to whom the plaintiff declares that they have paid their share of the rent. In the written statement, amongst other defences, this plea was raised that, inasmuch as the rent payable by the lessees was a several and not a joint rent, a suit would not lie against them jointly to recover rent. This plea is undoubtedly a good one, but I notice that in the decree in the case a joint decree has not been passed against the defendants. The Court has most carefully separated the interests of all the defendants one from the other, and has given against each a several decree. Under that decree execution could not issue against any one individual for more than the amount actually decreed against him severally. I cannot see that the defendants have in any way been prejudiced by this. I must overrule this portion of the appeal. Then it is contended that the limitation article applicable to this suit is not article 116, which has been applied by the lower Courts, but article 110. I am of opinion that this plea is valid and must be supported. In fact, were it not that reliance is placed on a decision of the Calcutta High Court in *Umesh Chunder Mundul v. Adarmoni Dasi* (1) by the learned pleader for the respondents, I should have thought that the matter was not capable of argument. In that case, however, the learned Judges (one of them with very much hesitation and doubt) held that a suit for rent on a registered lease falls under the limitation prescribed by article 116 of the second schedule to the Limitation Act. In that opinion I am unable to concur. It seems to me that article 110 of that schedule is the only article which can reasonably be applied to the present case. That article prescribes a period of three years for a suit for arrears of rent, the period commencing to run from the time that the arrears became due. I cannot understand why we should wrest the words so as to hold that a suit for arrears of rent, that is a suit to recover that which is payable on account of the use

(1) (1887) I. L. R., 15 Cal., 221.

1903

RAM NARAIN

v.
KAMTA
SINGH.

and occupation of land, must be regarded from a limitation point of view as being a suit for compensation for breach of contract. I do not understand why, when this article (110) apparently plainly provides for the case now before me, I should go out of my way and hold that article 116 applies. Apparently, as all leases for more than a year reserving annual rent must be registered, the consequence would be that article 110 would be practically useless and superfluous. I cannot think it was the intention of the Legislature when framing article 110 that there should be read into the first column the words "due on an unregistered lease." I must therefore on this point allow the appeal and modify the decree of the Court below. I give a decree severally against each defendant according to the specification mentioned in the decree for their share of the rent for three years immediately preceding the date of the institution of the suit. This modification of the decree will apply of course only to the cases of the defendants appellants, Ajudhia, Ram Narain, Bandi Din and Shankar Lal. As to the other defendants who have not appealed no order will be made. The appellants are entitled to the costs of this appeal.

Decree modified.

1903
July 16.

Before Sir John Stanley, Knight, Chief Justice and Mr. Justice Burkitt.
BENI PRASAD (JUDGMENT-DEBTOR) v. SARJU PRASAD AND OTHERS
(DECREE-HOLDERS).*

Act No. XV of 1877 (Indian Limitation Act), Schedule II, Article 178—Execution of decree—Execution suspended by action of the Court—Limitation.

Application for execution of a decree for sale on a mortgage, passed on the 30th of March 1893, was made in March 1896, and the property mortgaged was advertised for sale on the 20th of May 1897. A suit was, however, filed by the minor son of the judgment-debtor, in consequence of which the sale was, on the 17th of May 1897, stayed "pending the decision of the suit." A decree was given in favour of the son on the 2nd of August 1897; but this was reversed in appeal on the 9th of February 1898, and the son's suit was dismissed. But there was a further appeal to the High Court, which, on the 29th of June 1900, set aside the decree of the lower appellate Court and remanded the record for trial on the merits. Finally the decree of the 2nd of August 1897 was

* Second Appeal No. 281 of 1902, from a decree of W. Tudball, Esq., District Judge of Gorakhpur, dated the 6th of January 1902, reversing an order of Pandit Alopi Prasad, Officiating Subordinate Judge of Gorakhpur, dated the 28th of September 1901.