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the lands themselves." It would be inequitable to make one man's property pay the debt of another. Under the Muhammadan law, although upon the death of the ancestor, his estate devolves immediately upon his heirs, the heirs take it subject to the payment of his debts, and therefore although there may not be a specific charge upon the estate for the payment of the debts, the debts may be deemed to constitute a general charge on the estate. That being so, the plaintiff, who is the creditor of the father of the appellant's debtor, has priority over the appellant in respect of her debt. Since the plaintiff has, as I have said above, a general charge over the estate, no question of rateable distribution under section 295 of the Code of Civil Procedure can arise between her and the appellant. I therefore agree in the order proposed.

BY THE COURT.—The order of the Court is, that in lieu of the decree passed by the learned Subordinate Judge the following decree be substituted, namely, a decree declaring that the plaintiff respondent has priority in respect of the amount of her decree over the decree obtained by the defendant appellant, and that the defendant appellant can bring the property in suit to sale in execution of his decree subject to the plaintiff's rights under the decree obtained by her, and also that the defendant appellant do pay the cost of this appeal.

Decree modified.

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June 6.

Before Mr. Justice Blair and Mr. Justice Banerji.

ROSHAN SINGH (JUDGMENT-DEBTOR) v. MATA DIN AND OTHERS

(DECREE-HOLDERS).*

Execution of decree—Limitation—Act No. XV of 1877, (Indian Limitation Act) section 20—Debt—Civil Procedure Code, section 258.

Held that for the purpose of deciding whether or not an application for execution is barred by limitation, it is competent to the executing Court to take into consideration a payment made out of Court by the judgment-debtor in part satisfaction of the decree, although such payment may not have been certified in the manner provided for by section 258 of the Code of Civil Procedure. *Kishan Singh v. Aman Singh* (1), and *Tukaram v. Babaji* (2) followed. *Mithu Lal v. Khairati Lal* (3) overruled.

*First Appeal No. 126 of 1903 from an order of Pandit Raj Natic, Subordinate Judge of Mainpuri, dated the 30th of July 1902.

(1) (1894) I. L. R., 17 All., 42. (2) (1895) I. L. R., 21 Bom., 122.

(3) (1890) I. L. R., 12 All., 569.

Held also that the word "debt" as used in section 20 of the Indian Limitation Act, 1877, includes a judgment debt. *Bamhit Bai v. Satgur Bai* (1), *Janaki Prasad v. Ghulam Ali* (2), *Muhammad Said Khan v. Payag Sahai* (3), *Billings v. The Uncovenanted Service Bank* (4), *Heera Lal Mookhopadhyay v. Dhunput Singh* (5) and *Shripatray v. Govind Narayan* (6) referred to. *Kally Prosonno Hazra v. Heera Lal Mundle* (7), *Mungol Prashad Dicit v. Shama Kanto Lahory Chowdhry* (8) and *Kader Bulesh Sarkar v. Gour Kishore Roy Chowdry* (9) not followed.

THIS was an appeal arising out of the execution of a decree. Mata Din and others obtained, on the 26th of February 1897, a decree for sale under section 88 of the Transfer of Property Act against Roshan Singh, and this decree was made absolute on the 20th of November of the same year. Application for execution was made on the 3rd of January 1898, and partial satisfaction of the decree obtained. The next application for execution was presented on the 23rd of August 1901, which was objected to by the judgment-debtor as being time-barred. The decree-holders pleaded that on the 20th of August 1900 part payment of the amount of the decree and also of interest as such was made by the judgment-debtor, and that this payment saved limitation. The Court of first instance (Munsif of Etawah) dismissed the application. On appeal by the decree-holders the lower appellate Court (Subordinate Judge of Mainpuri) reversed the order of the Munsif, holding that the decree-holders' application for execution was not barred by limitation. The judgment-debtor thereupon appealed to the High Court.

Maulvi Muhammad Ishaq Khan, for the appellant.

Babu Beni Madhub Ghose, for the respondents.

BLAIR and BANERJI, JJ.—The question to be determined in this appeal is whether the decree-holders' respondents' application for execution, dated the 23rd of August, 1901, was time-barred. The last previous application had been made on the 3rd of January, 1898. The Court below has found that on the 20th of August, 1900, part payment of the amount of the decree, and also of interest as such, was made by the judgment-debtor.

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| (1) (1880) I. L. R., 3 All., 247. | (5) (1873) I. L. R., 4 Calc., 500. |
| (2) (1882) I. L. R., 5 All., 201. | (6) (1889) I. L. R., 14 Bom., 390. |
| (3) (1894) I. L. R., 16 All., 228. | (7) (1877) I. L. R., 2 Calc., 468. |
| (4) (1881) I. L. R., 3 All., 781. | (8) (1879) I. L. R., 4 Calc., 708. |
| (9) (1902) 6 C. W. N., 768. | |

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That Court has accordingly held that, under the provisions of section 20 of the Limitation Act, the decree-holders had a fresh start for the computation of limitation from that date, and that as the application for execution was made within three years of it, the application was not beyond time. The judgment-debtor has preferred this appeal, and two contentions have been raised on his behalf. The first is that, having regard to the provisions of section 258 of the Code of Civil Procedure, the Court was not competent to take cognizance of any payment made out of Court unless it was certified to it, and as the payment on which the Court below relies was not so certified it could not be taken into consideration even for the purpose of limitation. This contention is no doubt supported by the ruling in *Mitthu Lal v. Khairati Lal* (1). But against the view entertained by the learned single Judge who decided that case, there is a long series of decisions in which it was held that, notwithstanding the provisions of section 258, payment made out of Court and not certified to it could be proved and taken cognizance of by the Court for the purpose of limitation. Most of these cases are referred to in the judgment of our brother Burkitt in the case of *Kishan Singh v. Aman Singh* (2), with which we fully agree. The Calcutta High Court and the Bombay High Court have held the same view. The latest ruling of the latter Court on this point is the case of *Tukaram v. Babaji* (3). In our judgment the Court below was competent, notwithstanding the provisions of section 258, to take into consideration the payment made by the judgment-debtor out of Court for the purposes of limitation.

The next contention on behalf of the appellant is that the word debt as used in section 20 of the Limitation Act does not include a judgment debt, but only applies to a debt in respect of which a suit might be brought. In support of this contention the decisions of the Calcutta High Court in *Kally Prosonno Hazra v. Heera Lal Mundle* (4), *Mungol Prashad Dichit v. Shama Kanto Lahory Chowdry* (5) and *Kader Bulsh Sarhar v. Gour Kishore Roy Chowdry* (6) have been relied upon by

(1) (1890) I. L. R., 12 All., 569. (4) (1877) I. L. R.; 2 Calc., 468,
(2) (1894) I. L. R., 17 All., 42. (5) (1879) I. L. R., 4 Calc., 708,
(3) (1895) I. L. R., 21 Bom., 122. (6) (1902) 6 C. W. N., 766.

Mr. *Ishaq Khan*. The authority of the ruling first mentioned was doubted by this Court in the Full Bench case of *Ramhit Rai v. Satgur Rai* (1). In *Janki Prasad v. Ghulam Ali* (2), Mahmood, J., held that the word "debt" as used in section 20 of the Limitation Act includes a judgment debt, and this was assumed by our brother Burkitt in the case of *Muhammad Said Khan v. Payag Sahai* (3). We see no reason to place upon the word "debt" in section 20 the limited interpretation which the Calcutta High Court has put upon it. The word "debt" is wide enough to include a judgment debt, and having regard to the fact that the cognate section 19 of the Limitation Act has been held by a Full Bench of this Court in *Ramhit Rai v. Satgur Rai* (1) to apply to a judgment debt, there is no reason to differentiate the scope of one of the two sections from that of the other. We may also observe that the word "debt" as used in section 25 of the Contract Act has in the cases of *Billings v. The Uncovenanted Service Bank* (4), *Heera Lall Mookhopadhyaya v. Dhunput Singh* (5) and *Shripatray v. Govind Narayan* (6) been held to include a judgment debt. We agree with the view which has been adopted in this Court as to the interpretation to be put upon the word "debt" as used in section 20, and no argument has been pressed upon us to justify our holding that the policy of the Act was to exclude from its operation debts which have merged into a decree. *Prima facie* the reasons are all the other way. We find nothing in the scope of the Act to limit its operation in the way contended for. We are accordingly of opinion that the Court below was right, and that this appeal must fail. We dismiss it with costs.

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Appeal dismissed.

(1) (1880) I. L. R., 3 All., 247.

(2) (1882) I. L. R., 5 All., 201.

(3) (1894) I. L. R., 16 All., 228.

(4) (1881) I. L. R., 3 All., 781.

(5) (1878) I. L. R., 4 Calc., 500.

(6) (1889) I. L. R., 14 Bom., 390.