

any person of a suit for possession of any land, the right of such person to the land should be extinguished. Before this the right to sue only was barred, the right to the land not being extinguished. Under this Act both the remedy and the right are barred. The next enactment, Act XV of 1877, introduced a material change in the law as regards limitation. According to it the right to institute a suit for redemption commenced to run from the time when the cause of action accrued, but at the time when this Act was passed the right of the appellant was already barred, and there is a provision in it that nothing therein contained shall be deemed to affect any title acquired or to revive any right to sue already barred (see section 2). Under these circumstances it appears to us clear that the decision of the learned Subordinate Judge, in so far as he held that the suit was barred by the provisions of the enactment to which we have referred, is correct. There is no other question before the Court. We therefore dismiss the appeal with costs.

Appeal dismissed.

1906

MUHAMMAD
AKBAR
HUSAIN
KHAN
v.
IZZAT-UN-
NISSA.

Before Mr. Justice Banerji and Mr. Justice Richards.

GARURDHUJ PRASAD SINGH (CHOREE-HOLDER) APPELLANT v. BAIJU
MAL AND OTHERS (JUDGMENT-DEBTORS) RESPONDENTS.*

*Civil Procedure Code, section 610—Execution of decrees—Privy Council—
Restoration of property alienated pending appeal to the Privy Council—
Procedure.*

Pending an appeal to His Majesty in Council, certain property forming part of the subject-matter of the suit in which such appeal had been preferred was sold by auction in execution of a money decree against the plaintiff who held the decree of the High Court under appeal. The defendant's appeal to the Privy Council was decreed. *Held* that the successful appellant was entitled to recover the property sold as above mentioned by means of an application under section 244 read with section 610 of the Code of Civil Procedure, and this right was not affected by the fact that the auction purchasers were not parties to the decree of the Privy Council. *Gulzari Lal v. Madho Ram* (1) followed. *Ilagwati Prasad v. Jamma Prasad* (2) and *Sadiq Husain v. Lalla Prasad* (3) distinguished.

1906

January 11.

* First Appeal No. 33 of 1905, from a decree of Munsif Muhammad Ahmad Ali Khan, Subordinate Judge of Aligarh, dated the 17th of September, 1904.

(1) (1904) I. L. R., 20 All., 447. (2) (1896) I. L. R., 19 All., 136.
(3) (1897) I. L. R., 20 All., 139.

1906

GARURDHUJ
PRASAD
SINGH
v.
BAIJU MAL.

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

Babu *Jogindro Nath Chaudhri*, *Munshi Gobind Prasad* and *Munshi Jang Bahadur Lal*, for the appellant.

Messrs. *Abdul Majid*, *Karamat Husain* and *Abdul Raof*, for the respondents.

BANERJI and RICHARDS, JJ.—This appeal arises out of an application made by the applicant, *Thakur Garurdhuj Prasad Singh* for restitution under a decree made by His Majesty in Council under the following circumstances. A suit was brought against the appellant by his brother for recovery of possession of a share in certain immovable property. It was dismissed by the Court of first instance, which held that the property was an impartible raj and passed to the eldest son by right of primogeniture. This decree was set aside by the High Court in appeal. The decree of the High Court was put into execution, and the plaintiff obtained possession of the property decreed to him. An appeal was preferred to His Majesty in Council, with the result that the decree of the High Court was set aside and that of the Court of first instance dismissing the suit was restored. Before the decree of the Privy Council was passed, certain malikana allowance which was a part of the property decreed in the suit was sold by auction in execution of a money decree obtained against the plaintiff and was purchased by the respondents. After the decree of the Privy Council the defendant to the suit, *Garurdhuj Prasad Singh*, applied to be restored to possession of the property of which he had been deprived in execution of the decree of this Court. He was restored to possession of most of the property, but not of the malikana allowance. He accordingly made the application which has given rise to this appeal to be restored to possession of the malikana allowance also, as against the respondents. The Court below has dismissed the application, holding that as the respondents were no parties to the decree made by His Majesty in Council, the application is not maintainable against them. In our judgment this view of the Court below is erroneous. The decree of His Majesty in Council had in substance the effect of decreeing restoration of the property which had been

wrongly decreed by the High Court and of which possession had been obtained in pursuance of that decree. Therefore it was an order of which enforcement might be sought under section 610 of the Code of Civil Procedure. Upon an application being made under that section, the Court to which the order is transmitted is to enforce it in the manner and according to the rules applicable to original decrees. The order of His Majesty in Council having been transmitted to the lower Court it had to give effect to it under the provisions of the Code of Civil Procedure relating to execution, that is to say, under the provisions of section 244. The respondents being auction-purchasers of the property pending the appeal to His Majesty in Council are representatives of the judgment-debtor within the meaning of that section. A Full Bench of this Court has recently held in *Gulzari Lal v. Madho Ram* (1), that an auction-purchaser at a sale in execution of a simple money decree is a representative within the meaning of section 244. The respondents are therefore representatives of the judgment-debtor within the meaning of that section, and execution can proceed as against them. The Court below relies upon the rulings of this Court in *Bhagwati Prasad v. Jamna Prasad* (2) and *Sadiq Husain v. Lalji Prasad* (3) and the learned Counsel for the respondents also based his arguments on the strength of those rulings. We do not deem it necessary to say whether or not we agree with those rulings, as in our opinion those cases are distinguishable from the present. There the persons against whom restoration was sought had acquired an interest in the decree before the appeal to the Privy Council had been filed, and they had not been made parties to the appeal. It was held that as against them restitution could not be granted. That is not the case here. In the present instance the respondents acquired an interest in the property in question during the pendency of the appeal to the Privy Council and therefore took the property subject to the result of that appeal. They are therefore bound by the decree of the Privy Council, and are consequently representatives within the meaning of

1906

 CARUBDHUJ
 PRASAD
 SINGH
 v.
 BAIJU MAL.

(1) (1904) I. L. R., 26 All., 447. (2) (1896) I. L. R., 19 All., 136,
 (3) (1897) I. L. R., 20 All., 139.

1906

GARENDIUS
PRASAD
SINGH
v.
BAIJU MAL.

section 214 against whom restitution can be sought by way of execution. We accordingly allow the appeal, set aside the order of the Court below, and remand the case to that Court under section 562 of the Code of Civil Procedure for determination of the other questions which arise in the case and for the disposal of it according to law. The appellants will have their costs of this appeal. Other costs will follow the event.

Appeal decreed and cause remanded.

1906

January 11.

Before Mr. Justice Banerji and Mr. Justice Richards.

WALI-ULLAH AND ANOTHER (DEPENDANTS) v. DURGA PRASAD
(PLAINTIFF) AND SAIDAN (DEPENDANTS).*

Act No. VII of 1870 (Court Fees Act), schedule II, article 17, clause (vi)
—*Court Fee—Suit to recover possession of a share in immovable property after partition.*

Where on the face of the plaint it appeared that the suit was in fact a suit to establish the plaintiff's title to a one-third share in certain property and to recover possession of the same, a claim for partition being added to make the relief sought effectual, it was held that an *ad valorem* fee was payable on the plaint and not a fee of Rs. 10 as provided by article 17, clause (vi) of the second schedule to the Court Fees Act. *Balwant Ganesh v. Nona Chintaman* (1) followed. *Kirtly Churn Mitter v. Annath Nath Deb* (2) referred to.

In this case the plaintiff prayed, that "the one-third share of Juala Pershad, the former owner, may, by right of ownership, purchase and delivery of possession to the plaintiff, be put in separate possession of the plaintiff by means of partition."

On this a Court fee of ten rupees was paid under schedule II, article 17(vi) of the Court Fees Act (Act VII of 1870). The Court of first instance (Subordinate Judge of Agra) found that inasmuch as the plaintiff was not on the evidence in actual physical possession of any portion of the house, &c., an *ad valorem* fee was payable. The lower appellate Court (District Judge of Agra) reversed the order of the Court of first instance and remanded the case for disposal on the merits, holding that

* First Appeal No. 97 of 1905, from an order of A. B. Bruce, Esq., District Judge of Agra, dated the 25th of April, 1905.

(1) (1893) I. L. R., 18 Bom., 209.

(2) (1882) I. L. R., 8 Cal., 1757.