

APPELLATE CIVIL.

1907
January 15.*Before Mr. Justice Sir George Knox and Mr. Justice Richards.*

SRI RAM AND OTHERS (DECREE-HOLDERS) v. HET RAM AND OTHERS (JUDGMENT-DEBTORS). *

Act No. XV of 1877 (Indian Limitation Act), section 7; schedule II, articles 178 and 179—Execution of decree—Limitation—Minority.

On the 11th of May 1886 a decree under section 88 of the Transfer of Property Act, 1882, was passed in favour of one *S L*. In June 1888 *S L* died leaving him surviving three sons, all minors. On the 30th of April 1889 these three sons, still minors, made an application for an order absolute under section 89 of the Act. Nothing further was done towards execution of the decree until the 1st of October 1904 when the three sons, one being still a minor, again applied for an order absolute for the sale of the mortgaged property. Held that the application of the 1st October 1904 was not barred by limitation. *Zamir Hasan v. Sundar* (1) followed. *Bhagat Bihari Lal pro Ram Nath* (2) and *Baldeo v. Ibn Haidar* (3) referred to by Richards, J.

IN this case one Sukh Lal, on the 11th of May 1886, obtained a decree under section 88 of the Transfer of Property Act, 1882, against Het Ram and others. Sukh Lal the decree-holder died in June 1888 leaving him surviving three sons, who were at the time of their father's death all minors. On the 30th of April 1889 the sons, who were still all minors, made an application for execution of the decree obtained by their father, which in subsequent proceedings was taken to be (as stated in the judgment of Knox, J.) an application for an order absolute for sale. From that date no further proceedings were taken until the 1st of October 1904, when another application was made for an order absolute. At this date one at least of the three applicants was a minor. The Court of first instance (Munsif of Moradabad) held that the application of the 1st of October 1904 was barred by limitation and dismissed it, and the decree-holders' appeal from this order was likewise dismissed by the District Judge. The decree-holders thereupon appealed to the High Court.

Dr. *Tej Bahadur Sapru* and Pandit *Brij Narain Gurtu*, for the appellants.

* Second Appeal No. 664 of 1906 from a decree of W. F. Kirton, Esq., Additional District Judge of Moradabad, dated the 27th of April 1906, confirming a decree of Babu Bans Gopal, Munsif of Moradabad, dated the 6th of May 1905.

(1) (1899) I. L. R., 22 All., 199.

(2) (1905) I. L. R., 27 All., 704.

(3) (1905) I. L. R., 27 All., 625.

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Babu *Jogindro Nath Chaudhri* (for whom Babu *Sarat Chandra Chaudhri*), for the respondents.

KNOX, J.—This second appeal arises out of a decree granted under section 88 of the Transfer of Property Act, in favour of Sukh Lal, father of the present appellants, as against the judgment-debtors, who are respondents. The decree was given on the 11th of May 1886. Some time in June 1888 Sukh Lal died, leaving him surviving the three appellants, who were all minors at that time. On the 30th of April 1889 these three sons, still minors, made an application for execution. The file connected with these proceedings has been destroyed, but the parties and the Court have proceeded upon the assumption that it was an application for an order absolute, and it is difficult to see that it could have been for anything else. Since that date up to the 1st of October 1904 no further proceedings appear to have been taken by the decree-holders. Both the Courts below held that article 178 of the second schedule of the Indian Limitation Act governed the present application, and further that as time had begun to run in the life-time of Sukh Lal, the application out of which this appeal has arisen was time barred. In appeal before us it is contended that even assuming that time had begun to run during the lifetime of the appellant's father, the steps taken in 1889 saved the decree from becoming time barred. Our attention was called to the Full Bench ruling in *Zamir Hasan v. Sundar* (1) in support of this plea. The learned vakil for the respondent addressed a very able argument to us in which he tried to distinguish the present case from the Full Bench ruling just quoted. He pointed out that the right to apply accrued on the 11th of November 1886, and time began to run within three years as prescribed by article 178 of the Limitation Act. It is true, he argued, that the sons of Sukh Lal did apply for an order absolute, but after that they took no further steps. Article 178 was the article which governed limitation for an order absolute, and as time had begun to run against Sukh Lal, subsequent disability of minority would be no stop. It would appear to me that the application made on the 30th of April 1889 being, as this Court has frequently held, a step in aid of execution, time began to run, if I may use the expression, "anew"

from that date. At that date all the present appellants, who were then minors, were entitled to make the present application. The youngest Ram Ratan is still a minor and can sue up to a period within three years after his disability has ceased. That time has not yet arrived.

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RICHARDS, J.—In my judgment this appeal is concluded by the decision of the Full Bench in the case of *Zamir Hasan v. Sundar*. In that case a decree had been made in favour of two decree-holders. The decree was for sale upon a mortgage, which was subsequently made absolute, and then one of the decree-holders died. An application for execution was made by the widow of one of the deceased decree-holders, and the Full Bench held that this application saved limitation and enabled the minor children of the deceased decree-holders to take advantage of section 7 of the Limitation Act after they attained majority. In the present case the decree was made in favour of Sukh Lal. What must be taken as an application to make the decree absolute was made in 1889 by the sons of Sukh Lal, and this application was within time. It seems to me that the present case is on all fours with the decision of the Full Bench. It is said that there is some apparent conflict between the Full Bench decision and the decision of this Court to which I myself was a party, namely *Bhagat Bihari Lal v. Ram Nath* (1). In that case a decree having been made in favour of one Baijnath, the decree was made absolute on the 21st of March 1896. On December 11th, 1897, Baijnath died leaving the respondent Ram Nath, a minor, as his heir. The Court held that as time had begun to run in the lifetime of Baijnath, the respondent could not take advantage of section 7 of the Limitation Act. It is only necessary to point out that in that case there was not, as there is in the present case, and as there was in the Full Bench case, an application within time. This application, as has been already pointed out in the judgment of my learned brother, is an application which is a step in aid of execution. It was decided in the case of *Baldeo v. Ibn Haidar* (2) that although the first application to make absolute an order for sale under section 89 of the Transfer of Property Act is regulated by article 178, that application is nevertheless a step in aid of execution, and

(1) (1905) I. L. R., 27 All., 704. (2) (1899) I. L. R., 27 All., 625.

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that subsequent applications will be regulated by article 179, clause (4) of the second schedule of the Limitation Act, and not by article 178. For these reasons I concur with the judgment just delivered that the present appeal must succeed.

BY THE COURT.—The appeal is decreed and the decrees of both the Courts below are set aside and these proceedings are remanded to the Court of first instance, through the lower appellate Court, under section 562 of the Code of Civil Procedure with directions that the Court of first instance readmit them on the file of pending proceedings and dispose of them according to law. We make no order as to the costs of this appeal or the costs hitherto.

Appeal decreed and cause remanded.

APPELLATE CRIMINAL.

1907
January 16.

Before Mr. Justice Banerji and Mr. Justice Aikman.

EMPEROR v. BHOLA SINGH AND ANOTHER.*

Act No. XLV of 1860 (Indian Penal Code), sections 304 and 325—Assault by three persons armed with lathis—Intention—Culpable homicide—Grievous hurt.

Three persons attacked a fourth with lathis, and one of the assailants struck a blow which fractured the skull of the person attacked and caused his death, but the evidence left it in doubt which of the three assailants struck that blow.

Held that the offence of which the three assailants were guilty was grievous hurt rather than culpable homicide not amounting to murder. *Queen Empress v. Dama Baidya* (1) followed.

THE facts out of which this case arose were as follows:—In execution of a decree of the Small Cause Court against Bhola Singh and his son Jauhari, the decree-holder Banke Lal went to attach their property. He was accompanied by the Civil Court bailiff and his chaprasi, Ganeshi Lal his own servant, one Ram Chand a neighbour, and others. When these persons were seen approaching, the accused untied their cattle and drove them off to the jungle. One buffalo was seized, and Ganeshi Lal and Ram Chand went in search of the rest of the cattle. Bhola Singh and Jauhari, and another son Khem Sahai who absconded

*Criminal Appeal No. 1020 of 1906.

(1) (1896) I. L. R., 19 Mad., 483.