

Before Mr. Justice Aikman and Mr. Justice Karamat Hussein.

SHEO PRASAD AND ANOTHER (DECREE-HOLDERS) v. INDAR BAHADUR SINGH AND OTHERS (JUDGMENT-DEBTORS). *

1908
February 25.

Execution of decree—Limitation—Act No. XV of 1877 (Indian Limitation Act), schedule II, article 179 (4)—Application to take some step in aid of execution—Payment of process fees.

Held that the mere payment of process fees on an application for execution, unaccompanied by any application asking the Court to take some specific action, will not have the effect of giving a fresh starting-point for limitation within the meaning of article 179 (4) of the second schedule to the Indian Limitation Act, 1877. *Thakur Ram v. Katwaru Ram* (1) followed. *Vijayaraghavalu Naidu v. Srinivasalu Naidu* (2) distinguished.

THE facts of this case are as follows :—

An application was presented within time for attachment of certain house property. An objection was filed to this attachment, which was rejected on the 18th December 1903. On the 12th of January 1904 the objectors instituted a regular suit. In consequence of this suit the Court postponed the sale of the property and struck off the application. On the 7th September 1904 the suit was dismissed, but on appeal it was decreed by the District Judge. The decree-holders preferred a second appeal to the High Court, which was decided in their favour. Whilst the case was pending in this Court the decree-holders, as a matter of precaution, applied for the arrest of the judgment-debtor. This application has been rejected by the Court below on the ground that there had been no application to the Court to take any step in aid of the execution within three years previously to the application for arrest. The decree-holders appealed to the High Court contending that this application was not barred by limitation.

Mr. W. Wallach and Munshi Gokul Prasad, for the appellants.

The Hon'ble Pandit Sundar Lal, for the respondents.

AIKMAN and KARAMAT HUSEIN, JJ.— This is a decree-holder's appeal in proceedings arising out of the execution of the decree. An application was presented within time for attachment of certain house property. An objection was filed to this attachment, which was rejected on the 18th December

* First Appeal No. 140 of 1907 from a decree of Amjad Ullah, Subordinate Judge of Mirzapur, dated the 9th of February 1907.

(1) (1900) I. L. R., 22 All., 358. (2) (1905) I. L. R., 28 Mad., 399.

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The decree-holders come here in appeal. The learned counsel who appears for them relies on the payment of process fees made on his application to attach the house within three years of the present application to arrest. In support of this case he refers to a decision of the Madras High Court—*Vijayaraghavalu Naidu v. Srinivasulu Naidu* (1). That case is in our judgment distinguishable from the present, as it appears that the document along with which the process fees were deposited did ask the Court to issue a sale proclamation: it clearly therefore fell within the language of article 179(4) of the second schedule of the Limitation Act. In this case when the process fees were paid no application was made to the Court to do anything. The decision of our brother Banerji in *Thakur Ram v. Katwaru Ram* (2) supports the view taken by the Court below, and with that decision we are in accord.

At the same time we are of opinion that the order now under appeal has not the effect of deciding that the decree has become time-barred. As said above, the application to attach and sell the house property was made within time. The granting of that application was suspended, not from any fault of the decree holders, but owing to the institution of the suit referred to above.

That suit has been finally decided in the decree-holders' favour by this Court on the 5th January 1907, and the dismissal of the application for arrest made while the application for

(1) (1905) I. L. R., 28 Mad., 309. (2) (1900) I. L. R., 22 All., 358.

attachment and sale was in suspense will not, in our opinion, have the effect of preventing the decree-holders from exercising their right, now that the suit instituted by the objectors has been decided in their favour, to ask the Court to go on with the application for attachment and sale, which must be deemed to have been in suspense pending the decision of the suit. The order under appeal, however, cannot successfully be assailed, and we dismiss this appeal. Under the circumstances we make no order as to costs.

Appeal dismissed.

Befors Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkiit.

SHAHBAZ KHAN AND OTHERS (PLAINTIFFS) v. UMRAO PURI AND OTHERS
(DEFENDANTS).*

Public nuisance—Killing of cows by Muhammadans—Custom.

Under certain limitations the slaughtering of kine by Muhammadans is not illegal. It is the legal right of every person to make such use of his own property as he may think fit, provided that in so doing he does not cause real injury to others or offend against the law, even though he may thereby hurt the susceptibilities of others. The right of Muhammadans to slaughter kine is one to which they are legally entitled irrespective of custom, and it is only when they abuse the right that its exercise can be interfered with. *Muttumira v. Queen-Empress* (1), *Queen-Empress v. Byramji Edalji* (2), *Queen-Empress v. Zaki-ud-din* (3), *Queen-Empress v. Imam Ali* (4), *Romesh Chunder Sunnyal v. Hiru Mondal* (5) and *Hudjes Muzkur Ali v. Gundowree Sahoo* (6) referred to.

This was a suit brought by certain Muhammadan inhabitants of the village of Behta Goshain in the district of Budaun asking for a declaration of their right to slaughter cows within their own premises in the village for the purpose of daily food as well as for sacrifice under any limitation or otherwise. The circumstances which led to the institution of the suit are detailed in the judgment of the Court, but, briefly, the suit was instituted in consequence of certain Hindus having procured from the District Magistrate of Budaun an order prohibiting the slaughter of cattle altogether in the village of Behta Goshain. The defendants denied the right claimed by the plaintiffs and put forward

* First Appeal No. 247 of 1905 from a decree of L. H. Turner, District Judge of Shahjahanpur, dated the 22nd of July 1905.

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| (1) (1884) I. L. R., 7 Mad., 590. | (4) (1887) I. L. R., 10 All., 150. |
| (2) (1887) I. L. R., 12 Bom., 437. | (5) (1880) I. L. R., 17 Calc., 852. |
| (3) (1887) I. L. R., 10 All., 44. | (6) (1876) 25 W. R., Cr. R., 72. |

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