

*Before Mr. Justice Prinsep and Mr. Justice Hill.*

UMESH CHUNDER DUTTA AND OTHERS (DECREE-HOLDERS) *v.* SOONDER  
NARAIN DEO AND OTHERS (JUDGMENT-DEBTORS).<sup>e</sup>

1889  
June 18.

*Limitation Act, 1877, art. 179—Application to take a step in aid of execution—Opposing application to set aside sale in execution of decree.*

The appearance of a decree-holder by his pleader to oppose an application made by the judgment-debtor to set aside a sale in execution of the decree is not an application within the meaning of art. 179 of sch. ii. of the Limitation Act to take a step in aid of execution. The application contemplated by that article is an application to obtain some order of the Court in furtherance of the execution of the decree (1).

THIS was an application for execution of a decree, dated 8th March 1877. The only question was whether or not execution was barred by lapse of time. The previous proceedings in execution, so far as they are material, were as follows :—

On the 26th June 1883, up to which time the decree had been kept alive, an application was made to execute it, and on the 17th August 1883, an order was passed for the issue of proclamation of sale of certain property which had been attached. On the 21st November, the sale of the property took place. On the 14th December 1883, the judgment-debtors applied that the sale should be set aside on the ground of irregularity, and on the same day an order was made to serve notice on the decree-holders, the 19th of December being fixed for hearing the application. On that day the application was heard, the decree-holders appearing by pleader, and opposing the application, but it was allowed, and the sale set aside.

The next application was filed on the 7th December 1886 but this, after various orders had been made upon it, was struck off for default. The present application was made on the 21st May 1888, within three years of the last previous application of 7th December 1886. To support the decree, however, it became necessary to show that the application of

<sup>e</sup> Appeal from an Order No. 96 of 1889, against the order of Baboo Dwarka Nath Bhattacharjee, Subordinate Judge of Midnapore, dated the 17th of December 1888, affirming an order of Baboo Bhuban Mohan Ganguli, Munsiff of Midnapore, dated the 18th of August 1888.

(1) See *Shib Lal v. Radha Kishan*, I. L. R., 7 All., 898.

1889  
 UMESH  
 CHUNDER  
 DUTTA  
 v.  
 SOONDER  
 NARAIN DEO.

7th December 1886 was not barred, and for this purpose it was now contended that the period of three years should be calculated from the appearance of the decree-holder by pleader on the 19th December 1883, and that that opposition was an application to take some step in execution of the decree within art. 179, sch. ii of the Limitation Act. Both the lower Courts held that execution of the decree was barred.

The decree-holders appealed to the High Court.

Baboo *Nilmadhab Sen* for the appellants.

Baboo *Umbica Charan Bose* and Baboo *Umakali Mukerjee* for the respondents.

The following cases were referred to:—*Radha Prasad Singh v. Sundur Lall* (1), *Kewal Ram v. Khadim Hosain* (2), *Kristo Coomar Nag v. Mahobat Khan* (3), *Rajkumar Banerjee v. Rajlakhi Dabi* (4), and *Shib Lal v. Radha Kishen* (5).

The judgment of the Court (PRINSEP and HILL, JJ.) was as follows:—

The lower Courts have concurrently held that this application to execute is barred by limitation.

The appellants' pleader contends that the application is within three years, inasmuch as it was within three years from the date of the appearance of his pleader to oppose an application made by the judgment-debtor to set aside the sale held in execution. We agree with the lower Court that the appearance of the pleader to oppose the proceedings taken by the judgment-debtor cannot properly be regarded as an application within the terms of art. 179 to take some step in aid of execution. It seems to us rather that the application, contemplated by that article of the Limitation Act, is an application to obtain some order of the Court in furtherance of the execution of the decree. The appearance of the pleader cannot be regarded as any such application. The appeal is therefore dismissed with costs.

J. V. W.

*Appeal dismissed.*

(1) I. L. R., 9 Calc., 644.

(2) I. L. R., 5 All., 576,

(3) I. L. R., 5 Calc., 595.

(4) I. L. R., 12 Calc., 441.

(5) I. L. R., 7 All., 898.