

1889 the plaintiff to show that his suit has been brought within time
 SARASWATI and in the absence of evidence to the contrary, we must take it
 DASI that the dispossession took place from the commencement of
 v. Assar. In this view the suit would be barred. We accordingly
 HORITARUN dismiss the suit, setting aside the judgment of the lower Appellate
 CHUCKER- Court, and restoring that of the first Court, with costs of this
 BUTTL. and the lower Appellate Court.

J. V. W.

Appeal allowed.

Before Mr. Justice Prinsep and Mr. Justice Hill.

NILMONY SINGH DEO (DECREE-HOLDER) v. BIRESSUR BANERJEE
 AND OTHERS (JUDGMENT-DEBTORS).^a

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 June 17.

Civil Procedure Code, 1882, s. 230—Application to transfer decree for execution—Application for execution of decree—"Granting" application, Meaning of—Issue of process.

An application to the Court which passed a decree for a certificate to allow execution to be taken out in another Court, is not an application for the execution of the decree within the terms of s. 230 of the Code of Civil Procedure.

The "granting" of an application under that section includes the issue of process for execution of the decree.

THIS was an application for execution of a decree obtained on the 7th August 1875, in the Court of the Collector of Manbhoom. Between 1875 and 1887, applications were, from time to time, made in the Manbhoom Court for execution of the decree, in two of which applications some money was realized. On the 26th July 1887, the decree-holder applied to the Manbhoom Court for a certificate to enable the decree to be executed in the district of Burdwan. The decree having been transferred to the Burdwan Court, an application was made to that Court on 23rd May 1888, for the issue of a warrant of arrest against the judgment-debtor, and he was, under the provisions of s. 245B of the Civil Procedure Code (see s. 2, Act VI. of 1888), called upon to show cause why he should not be committed to jail in

^a Appeal from Order No. 82 of 1889, against the order of R. F. Rampini, Esq., Judge of Burdwan, dated the 12th of December 1888, affirming an order of Baboo Madhub. Chunder Chuckerbutty, Subordinate Judge of Burdwan, dated the 16th of August 1888.

execution of the decree. The judgment-debtor objected that the execution of the decree was barred by lapse of time under s. 230 Civil Procedure Code, and the Subordinate Judge upheld this objection, and dismissed the application on that ground; and the Judge, on appeal, came to the same conclusion. The decree-holder appealed to the High Court on the grounds that the application of the 23rd May 1888 was in continuation of the application of the 26th July 1887; that no previous application had been made and granted under s. 230 of the Civil Procedure Code; and that therefore the execution of the decree was not barred under that section.

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Mr. Woodroffe and Baboo Upendro Chundra Bose for the appellants.

Baboo Rash Behari Ghose and Baboo Srish Chundra Chowdhry for the respondents.

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

The decree in this suit was passed on the 7th August 1875. It was kept alive from that time until the 26th July 1887. On that date, an application for a certificate was made to the Deputy Collector of Manbhoom, the Court by which the decree was passed, to allow execution to be taken out in the Civil Court at Burdwan. The application, no doubt, was made in the form prescribed in s. 235, but the last column, clause (i), was necessarily vague in respect of the attachment of particular properties. The decree was sent for execution to Burdwan by a proceeding dated 13th April 1888, and was received on the 4th May following. Execution has been refused under s. 230 of the Code, it being found that more than twelve years have elapsed from the date of the decree, and that this matter fell within that section, inasmuch as a previous application had been made to execute the decree under s. 230, and had been granted. It is contended in second appeal by Mr. Woodroffe, first, that the application to the Deputy Collector of Manbhoom, dated 26th July, was an application to execute the decree within the terms of s. 230, and that the subsequent proceedings at Burdwan could only be properly regarded as proceedings in continuation

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and in furtherance of that application. In our opinion, the application made at Manbhoom was not an application to execute the decree, but an application to send the decree for execution by a Court which alone was competent to execute it in the manner desired. The Court at Manbhoom could have no power to execute a decree at Burdwan. The law, in our opinion, contemplates that in such a case the Court which passed the decree is competent only to transfer it for execution in the manner directed by s. 224, but that the application for execution should be made to the Court which has jurisdiction to issue processes in order to enforce payment of the money decreed. We therefore regard the application of the 26th July 1887, as an application merely to transfer the decree for execution, and not an application for the execution of the decree itself. The District Judge relies upon the case of *Dewan Ali v. Soroshibala Dabee* (1), as explaining the meaning of the granting of an application to execute within s. 230. It is unnecessary for us to discuss this matter, and to consider whether it is, as found in that case, to be equivalent to admitting an application within the terms of s. 245, or something beyond that, because we have no doubt that it includes the issue of a process for execution of the decree. In this case we have had brought to our notice two instances in which such processes issued and money was realized in part satisfaction of the decree, so that it is clear that the applications to execute, which were applications before the present application, were granted within the terms of s. 230. The decree-holder may or may not have cause to complain of the delay in the transmission of the decree from Manbhoom for execution to Burdwan, but that is not a matter which is relevant in the case now before us. Section 230 of the Code of Civil Procedure permits of no extension of the term specified, except for reasons which do not apply to this case. The appeal is therefore dismissed with costs.

J. V. W.

Appeal dismissed.

(1) I. L. R., 8 Cal., 297.