

sons, becomes the mother's *stridhan*, which devolves on her death upon her own heirs and not upon the heirs of her husband. The question in the case appears to have been carefully considered, and the ruling has been followed in several later cases including the case of *Gambhir Singh v. Makraddhuj* (1). In this last mentioned case it was contended that having regard to the ruling of the Privy Council in *Sheo Shankar Lal v. Debi Sahai* (2) the rulings of this Court must be deemed to be of no authority. The ruling in question is not a ruling upon the point which is now before the Court. What their Lordships in that case held was that under the Hindu Law of the Benares School property which a woman has obtained by inheritance from a female is not her *stridhan* in such a sense that on her death it passes to her *stridhan* heirs in the female line to the exclusion of males. This is not the question which is before us. Some of the considerations which arise in that case may have a bearing upon the point before us. The question is by no means free from difficulty, as has been pointed out in the case of *Chhiddu v. Narbat*. We think that we ought to abide by that decision, unless and until it is reversed by their Lordships of the Privy Council. We do not think that we ought to go behind it, and we therefore dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Sir George Knox and Mr. Justice Piggott.

CHOTE SINGH (DECREE-HOLDER) v, ISHWARI AND OTHERS (JUDGMENT-DEBTORS).*

Execution of decree—Limitation—Act No. XV of 1877 (Indian Limitation Act), schedule II, article 179(4)—Step in aid of execution—Civil Procedure Code (1882), sections 257A, 258—Application to certify payment made out of court.

Although a decree under section 89 of the Transfer of Property Act, 1882, may not be capable of adjustment under section 257A of the Code of Civil Procedure, 1882, yet where the parties had professed to make such an adjustment, and, the judgment-debtor having paid certain instalments of the decretal money, the decree-holder had applied to the court to have such payments certified under section 258 of the Code, it was held that such applications operated to keep the decree alive, although at the time there might have been no application

* Second Appeal No. 518 of 1909, from a decree of H. J. Bell, District Judge of Aligarh, dated the 10th of March, 1909, confirming a decree of Muhammad Shafi, Subordinate Judge of Aligarh, dated the 6th of July, 1908.

(1) (1907) 4 A. L. J., 673. (2) (1908) I. L. R., 25 All., 468.

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for execution actually pending. *Sujan Singh v. Hira Singh* (1) followed. *Tarini Das Bandyopadhyaya v. Bishtoo Lal Mukhopadaya* (2) referred to.

THE facts of this case were as follows :—

A decree under section 88 of the Transfer of Property Act was passed on the 24th of December, 1889, against the predecessors of the respondents, and on the 11th of September, 1890, an order absolute for sale was passed for Rs. 1,171-13-3 without costs. Several applications for execution were made in 1892 and 1893, and on the 2nd of May, 1899, the execution case was struck off. On the 13th of July, 1901, on an application for execution, an order was sent to the Collector for sale. On the 20th of December, 1901, however, an agreement was filed whereby the decretal amount to be paid was fixed and certain instalments were specified and on default of any instalment the whole amount was to be due. In consequence of this no sale took place. On the 11th of June, 1904, and the 14th of May, 1906, the decree-holder certified payments of two instalments.

The present application for execution was presented on the 1st of April, 1903, and the judgment-debtors objected that it was barred by limitation, not being presented within three years of any preceding application or any step in aid of execution, and that further it was barred by the twelve years' rule laid down in section 230 of the Code of 1882. The lower courts allowed the objection and dismissed the application.

The decree-holder appealed.

Mr. G. W. Dillon, for the appellant, contended that the decree being one under section 88 of The Transfer of Property Act, section 230 of the Code did not apply. He relied on *Jadunath Prasad v. Jagmohan Das* (3). Up to July 1901 the decree-holder had not failed to make applications for execution within three years of each preceding application. The proceeding of the 20th of December, 1901, by which an agreement was certified was a step in aid of execution. The payments which were certified in 1901 and 1904 were also steps in aid of execution. Apart from the question whether an application was pending, a payment certified had the effect of satisfying the decree to that extent, and therefore saved limitation. He cited *Sujan Singh v. Hira Singh* (1).

(1) (1889) I. L. R., 12 All., 399. (2) (1886) I. L. R., 12 Cal., 603.
(3) (1903) I. L. R., 25 All., 541.

Munshi *Gulzari Lal*, for the respondents, submitted that as between 1901 and 1908 no execution case was pending, there could be no "step in aid of execution." Moreover, as the decree was one under section 88, there could be no adjustment of that decree under section 257A of the Code of 1882. He relied on *Kashi Prasad v. Sheo Sahai* (1).

Mr. *G. W. Dillon*, in reply, submitted that section 257A was wide enough to cover all decrees, and that the case in *I. L. R.*, 19 All., 186, was wrongly decided. Moreover, as the judgment-debtor was a party to the agreement, he was estopped.

KNOX and PIGGOTT, JJ.—This is a decree-holder's appeal in an execution case. Both courts below have held the decree to be barred by limitation. A preliminary decree under section 88 of the Transfer of Property Act was passed on December 24th, 1889, which was followed by a decree absolute for sale on September 11th, 1890. Various proceedings in execution followed, the decree-holder apparently granting extensions of time in return for part-payment. The learned District Judge seems to have been under some misapprehension when he spoke of execution being "apparently barred by time" when a payment of Rs. 140 was certified in May 1899. It has been conceded before us in argument that the decree was alive and capable of execution when an application for the same was made on July 13th, 1901. This application was pending, and sale had actually been ordered, when on December 20th, 1901, the parties presented to the court and attested before it an agreement under the provisions of section 257A of the former Code of Civil Procedure, Act XIV of 1882. According to this agreement the judgment-debtors were to pay Rs. 1,800 (a larger sum than was due from them under the decree), but without further interest, and in certain specified instalments. The property was to remain hypothecated until the whole was paid and in case of default in the payment of any one instalment the decree-holder was to become entitled to "execute his [decree." Payments under this compromise were certified to the court on June 11th, 1904, and again on May 14th, 1906. Finally, the judgment-debtors having made default, the present application was made on May 22nd, 1908. The

(1) (1896) *I. L. R.*, 19 All., 186.

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application is for execution of the decree absolute of September 11th, 1890, but the decree-holder claims to execute the same subject to the terms of the agreement of December 20th, 1901. It is certainly very doubtful whether he can do this in face of this Court's ruling in *Kashi Prasad v. Sheo Sahai* (1), where it was held that a decree for sale under the Transfer of Property Act was not capable of adjustment under the provisions of section 257A of the Code of Civil Procedure. We were asked to reconsider this ruling, but it does not seem necessary for us to do so. It may be that the decree-holder is not entitled to enforce the agreement of December 20th, 1901, but that his decree of September 11th, 1890, is still alive and capable of execution according to its terms, due allowance being made for any payments since certified. We have to decide at present only the question whether the courts below were right in holding this decree to be time-barred. The case depends on the provisions of Article 179(4) of the Second Schedule to the Indian Limitation Act (XV of 1877). We have not to decide whether the certifying of the agreement of December 20th, 1901, was a step in aid of execution. There had been, as already pointed out, an application for execution on July 13th, 1901; the decree-holder's application to have payment certified on June 11th, 1904, was within three years of this date, and the similar application of May 14th, 1906, was made within three years both of this latter date and of the 22nd May, 1908, when execution of the decree itself was again asked for. The question then narrows itself down to this: Whether the decree-holder's applications under section 258 of Act XIV of 1882 can be treated as applications to the Court to take some step in aid of execution of the decree or order. There are two reported cases in the appellant's favour—*Sujan Singh v. Hira Singh* (2) and *Tarini Das Bandyopadhyaya v. Bishtoo Lal Mukhopadhyaya* (3). The only distinctions which can be drawn against the appellant are that in the former case the court laid some stress upon the fact that an application for execution was actually before the court at the time when the payment was certified, and that in the latter case the decree-holder took the precaution of asking that an execution proceeding which had

(1) (1896) I. L. R., 19 All., 186. (2) (1889) I. L. R., 12 All., 399.

(3) (1886) I. L. R., 12 Cal., 608.

been struck off should be restored to the file, and that the petition under section 258, Civil Procedure Code, be "placed on the record". The *ratio decidendi* of this case is in favour of the present appellant. It is pointed out that "the effect of the certificate is to satisfy the decree so far as the sum certified is concerned." It must be remembered that without such payment being certified, on the application of one or other of the parties, it could not be recognized as a payment by any court subsequently executing the decree. An application by the decree-holder under section 258 of Act XIV of 1882 therefore calls upon the court to do a certain act which *ipso facto* satisfies the decree to the extent of the payment certified, and without which the decree would not be satisfied to any extent whatever. We hold that such an application satisfies the requirements of article 179(4) of the second schedule to the Indian Limitation Act (XV of 1877), and that no sound distinction can be drawn between the present case and that reported in I. L. R., 12 All., 399.

We therefore set aside the orders of both the courts below and direct the court of first instance to readmit this application for execution and to proceed with it according to law. The decree-holder will get his costs in this and in the lower appellate court.

Appeal decreed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Piggott.

PRAN SUKH (PLAINTIFF) v. SALUG RAM AND OTHERS (DEFENDANTS) *

Pre-emption—Wajib-ul-arz—Custom or contract—Partition of village—Separate wajib-ul-arzes—Change in the language.

A village, originally undivided was first partitioned into several mahals with a separate settlement wajib-ul-arz for each. Subsequently one of these mahals was subdivided into two and fresh wajib-ul-arzes were framed for these two mahals. One of these new mahals was in turn divided into two, but no fresh wajib-ul-arzes were then framed. The wajib-ul-arzes framed at the first and second partitions differed *inter se* as to their conditions relative to pre-emption. *Held* that there was evidence only of a contract for pre-emption, which, so far as the two last formed mahals were concerned, had ceased to exist even before the expiry of the term of the settlement.

* Second Appeal No. 827 of 1908, from a decree of B. J. Dalal, District Judge of Agra, dated the 12th of May, 1908, modifying a decree of Sheo Prasad, Subordinate Judge of Agra dated the 25th of November, 1907.

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