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in regard to settlement of rent. In respect of that entry, a Special Judge is not a Court subordinate to the High Court; and that being so, we have neither appellate jurisdiction over him, nor any authority under s. 622 of the Code to interfere with his order.

The appeal must, therefore, be dismissed with costs.

T. A. P.

*Appeal dismissed.*

*Before Mr. Justice Tottenham and Mr. Justice Gordon.*

NUNDUN LALL (DECREE-HOLDER) v. RAI JOYKISHEN AND OTHERS  
 (JUDGMENT-DEBTORS).\*

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 April 25.

*Limitation Act (1877), Art. 179, para. (2)—Appeal against whole decree by one defendant only—Execution of decree—Execution against judgment-debtor who did not appeal.*

A plaintiff obtained on the 14th September 1881 a decree against two defendants, the decree as against the first defendant being one for partition; and as against the second defendant (who had set up a julkar right on the lands claimed to be partitioned, and had contended that partition could not be had, and had obtained a partial decree, but had been ordered to pay partial costs to the plaintiff), being one for costs.

The first defendant alone appealed against this decree, but unsuccessfully, his appeal being dismissed on the 18th January 1884. The decree-holder applied for execution of his decree as against the second defendant for cost in December 1886. Held that the application was not barred, for that limitation ran from the 18th January 1884.

NUNDUN LALL, one of the proprietors of mouzah Hosseinpore, which mouzah was, in the year 1881, partitioned by the Collector save and except a portion thereof, measuring 91 bigahs at that time under water. Subsequently the water on this portion dried up, and it became fit for cultivation. Nundun Lall thereupon applied to the Collector for partition of this portion; his application was however rejected on the ground that this land did not form part of the revenue-paying estate of Hosseinpore. Thereupon Nundun Lall brought a regular suit against the Secretary of

\* Appeal from Order No. 224 of 1883, against the order of A. C. Brett, Esq., Judge of Tirhoot, dated the 13th of March 1883, reversing the order of Baboo Grish Chunder Chatterjee, Subordinate Judge of that district, dated the 29th. of June 1887.

State for India in Council to compel partition. The Secretary of State appeared and contended that the land did not form part of Hosseinpore, and could not therefore be partitioned. In this suit one Rai Joykishen intervened, and was made a party defendant thereto: he then set up a julkar right and objected to partition. The suit was on the 14th September 1831 decreed in favour of Nundun Lall, but the Subordinate Judge found that the 91 bigahs in question were sometimes covered with water, and at other times dry land. He therefore made his decree subject to the intervenor's julkar rights during the periods that the land was under water, and directed him to pay a proportionate amount of costs to the plaintiff as he had been unsuccessful in his contention that the land ought not to be partitioned.

Against this decree, the Secretary of State alone appealed, contending that the whole suit should have been dismissed; his appeal was however dismissed by the High Court on the 18th January 1884.

On the 19th July 1886, Nundun Lall applied for execution of his decree; this application was however dismissed, and on the 3rd December 1886 a further application was made by him for execution as against the intervenor defendant for costs. The intervenor objected that the plaintiff's decree had become final as against him on the 14th September 1831, and that therefore the application was barred by limitation.

The Subordinate Judge, before whom the application was made, held relying on the case of *Raghunath Persad v. Abdul Hye* (1), that the application was not barred; the appeal by the Secretary of State, if it had been successful, being one which would have led to the dismissal of the whole of the plaintiff's suit, and therefore with loss of his costs obtained against the intervenor defendant; that limitation ran therefore as from the date of the High Court decree of the 18th January 1884.

The intervenor defendant appealed to the District Judge, who on the authority of the cases of *Sungram Singh v. Bujharat Singh* (2) and *Hur Pershad Roy v. Enayet Hossein* (3) held that

(1) I. L. R., 14 Calc., 26.

(2) I. L. R., 4 All., 36.

(3) 2 C. L. R., 471.

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limitation ran as against the intervenor from the 14th September 1881, he not having appealed from the decree of that date.

The decree-holder appealed to the High Court.

Baboo *Abinash Chunder Banerjee*, for the appellants, contended that the application was not barred, limitation running from the date of the final decree of the High Court, and cited *Gungamonee Dossee v. Shib Sunkar Bhattacharjee* (1), *Mullick Ahmed Zumma v. Mahomed Syed* (2), *Basant Lal v. Najmunnissa Bibi* (3).

Moulvi *Mahomed Yusuf*, for the respondents, contended that the application was barred, relying on *Hur Proshad Roy v. Enayet Hossein* (4), *Sangram Singh v. Bujharat Singh* (5), *Hingan Khan v. Ganga Parshad* (6), *Raghunath Pershad v. Abdul Hye* (7).

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

The question in this appeal is whether execution of the decree, obtained by the plaintiff-appellant against the respondents, is barred by limitation.

The case is governed by Article 179 of the second schedule of the Limitation Act. The decree was passed in the Court of first instance on the 14th September 1881. The case came up ultimately on second appeal to the High Court, and the High Court's decision, *Secretary of State v. Nundun Lall* (8), was passed on the 18th January 1884. Applications for execution were made in July and December 1886. Article 179, clause 2, provides that, where there has been an appeal, the date of the final decree or order of the Appellate Court is the date from which limitation begins to run.

Upon the face of the proceedings, this application would appear not to be barred by limitation; but the lower Appellate Court, upon consideration of various authorities cited by it,—cases in the Calcutta High Court and in that of Allahabad,—has come to the

(1) 3 C. L. R., 430.

(5) I. L. R., 4 All., 36.

(2) I. L. R., 6 Calc., 194.

(6) I. L. R., 1 All., 293.

(3) I. L. R., 6 All., 14.

(7) L. L. R., 14 Calc., 26.

(4) 2 C. L. R., 471.

(8) I. L. R., 10 Calc., 435.

conclusion that, as against the present respondents, execution of the decree is really barred. For it seems that the present respondents were not parties to the appeal from the Subordinate Judge's decision dated the 14th September 1881.

It was contended that, as against them, the appeal preferred by another defendant would not have affected the decree; and therefore as against these respondents the decree was really final when it was allowed to go by them without an appeal.

The suit was one for partition of certain lands. The present respondents intervened in that suit, and were made defendants upon the plea that no partition could take place, because they had julkar rights over the land in question which, they said, was submerged by water. Another party to the suit was the Secretary of State for India. His defence was that the land in question did not belong to the estate of the plaintiff, and he also contended that no partition could be made.

It may be that he intended to contend only that no partition could be made by the Collector under the butwara law; but at any rate he contended that no partition could be made, and alleged that the land did not belong to the plaintiff's estate. The decree was in favour of the plaintiff, and the Secretary of State was the only party who appealed. In the High Court his appeal was practically successful, so far as Government was concerned,—that is, the High Court was of opinion that the land could not be partitioned under the butwara law by the Collector, though it could be partitioned under the Code of Civil Procedure, and the Secretary of State was discharged from the suit with his costs.

We are asked, upon the circumstances of the case, to hold that Article 179 of the schedule of the Limitation Act should not be applied literally to this case, but should be modified in the sense in which it has been modified already in certain cases in the Calcutta and Allahabad High Courts. Those cases are *Hur Proshad Roy v. Enayet Hossein* (1), *Sangram Singh v. Bujharat Singh* (2), *Hingan Kham v. Ganga Pershad* (3), and *Raghnath Pershad v. Abdul Hye* (4). On the other hand, we have been referred to cases in this Court and in the High Court of Allahabad

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(1) 2 C. D. R., 471.

(3) I. L. R., 1 All., 293.

(2) I. L. R., 4 All., 36.

(4) I. L. R., 14 Calc., 26.

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in which the decisions favour the appellant's contention in the present case. Those cases are *Gungamonee Dasse v. Shib Sunkur Bhattacharjee* (1), *Mullick Ahmed Zumma v. Mahomed Syed* (2), and *Basant Lal v. Najmunnissa Bibi* (3). In one of these cases, namely *Gungamonee Dasse v. Shib Sunkur Bhattacharjee* (4), the Judges went entirely upon the words of the article, and it seems to us that, in a question of limitation, we ought to abide as strictly as possible by the terms of the law. We should not be disposed to import into the law any further restrictions, as to the rights of parties to sue and to execute their decrees, than the law itself expressly provides; but we are bound to recognise the fact that the law has been by interpretation, so to say, modified by decisions of this Court and the High Court of Allahabad. If therefore those cases were on all fours with the present one, we should feel bound to follow the decisions, unless we thought it right to refer the matter to a Full Bench. But we think that the present case does not come exactly under the rule laid down in those cases. In those cases in which execution was held to be barred as against parties who were not parties to the appeal, the decision rests expressly upon the ground that the appeal made by one did not and could not affect the decree as against others of the parties concerned in the case. In one case a former Chief Justice, Sir Richard Couch, in delivering judgment, said that the decree being against various parties for various reliefs in reality amounted to several decrees, although embodied in one paper. The rule governing this decision appears to be shortly this, that unless the whole decree was imperilled by the particular appeal which was preferred, the decision in the appeal would not alter the period of limitation in respect of execution of the decree as between other parties to the suit. In the present case we think that the whole decree was imperilled by the Secretary of State's appeal. Had he succeeded fully in maintaining his contention, namely that the land did not belong to the plaintiff's estate, his appeal would have been decreed, and as a matter of course practically the result would have been that the plaintiff's suit would have been dismissed; and he would have been precluded from executing any decree as against

(1) 3 C. L. R., 430.

(3) I L. R., 6 All., 714.

(2) I. L. R., 6 Calc., 194.

(4) 3 C. L. R., 430.

the present respondents. We are not bound, and we have no inclination to introduce into the limitation law any restrictions further than those which have been adopted by this Court on previous occasions. We think that the present case does not come within the further restrictions which we have mentioned, and that, upon the face of the proceedings and of the law, the execution in question is not barred.

That being so, we decree this appeal, setting aside the order of the lower Appellate Court and restoring that of the first Court, with costs.

T. A. P.

*Application allowed.*

*Before Mr. Justice Tottenham and Mr. Justice Gordon.*

MUNGESHUR KUAR AND OTHERS (JUDGMENT-DEBTORS) v. JAMOONA PRASHAD (DECREE-HOLDER).\*

1889  
May 14.

*Civil Procedure Code (Act XIV of 1882), s. 244—Claim to attached property—Question to be decided in execution—Liability of property to be sold in execution.*

The question whether property is liable to be sold in execution of a decree is one to be determined under s. 244 of the Code of Civil Procedure.

*Chowdhry Wahed Ali v. Jumass* (1) followed in principle.

ON the 20th April 1887 one Jamoona Prashad obtained a decree for Rs. 3,374 against one Panchu Kuar, the widow of Rajkumar Baboo Kali Pershad Singh. The debt in respect of which the decree was obtained was apparently incurred by the lady for payment of Government revenue and other public demands, but the decree itself was simply a personal decree, and created no charge on her husband's estate which had come into her possession. The decree-holder took out execution, and caused certain shares in the villages of Shampar and Shampur Dearah, which he described as the property of the judgment-debtor, to be attached and advertised for sale. But prior to the date (the 15th September 1887) fixed for the sale Panchu Kuar died, and further

\*Appeal from Order No. 46 of 1889, against the order of A. C. Brett, Esq., Judge of Tirhoot, dated the 28th of January 1889, reversing the order of Baboo Anant Ram Ghoss, Subordinate Judge of Tirhoot, dated the 11th of August 1888.

(1) 11 B. L. R., 149; 18 W. R., 185.