

1912

IN THE
MATTER OF
THE PETITION
OF
NAWAL
SINGH,

But there were circumstances in this case which might have justified the delay. However, I do not wish to go into that question inasmuch as, in my opinion, this Court cannot interfere in the matter. I dismiss the application but make no order as to costs.

Application dismissed.

APPELLATE CIVIL.

Before Mr. Justice Karamat Husain and Mr. Justice Tudball.

KHETPAL (DECREE-HOLDER) v. TIKAM SINGH (JUDGEMENT-DEBTOR).*

Civil Procedure Code (1882), section 230—Execution of decree—Limitation—Application for transfer of decree—Subsequent application for execution not in continuation of application for transfer.

Held that an application for execution can in no sense of the words be regarded as an application in continuation of an application for transfer of a decree from one court to another. In order that an application may be a continuation of another application, it is necessary that the two applications be of the same nature, and the application for transfer being an application of an entirely different nature from that for execution of a decree does not suspend the operation of section 230 of the Code of Civil Procedure, 1882. *Sundar Singh v. Doru Shankar* (1) applied. *Ram Sahai v. Nanni* (2) dissented from.

The facts of this case were briefly as follows :—

One Khetpal obtained a decree against the respondent on the 19th of December, 1896, at Agra. On the 15th of December, 1908, he applied for transfer of the decree for execution to Aligarh. On the 24th of February, 1909, an order was made granting this application. On the 23rd of March, 1909, an application was made for execution at Aligarh. The judgement-debtor objected that it was barred by limitation, as more than 12 years had elapsed since the passing of the decree. The court of first instance held that the present application was an application in continuation of the application for transfer, which was within time, and it dismissed the objection. The lower appellate court reversed this order on the ground that an application for transfer could not be said to be an actual demand for execution, though it might be a step in aid of execution. The decree-holder appealed.

Munshi *Benode Bihari* (with him *Munshi Gobind Prasad*), for the appellant, submitted that the application was within time, being merely in continuation of the application for transfer. He relied on *Ram Sahai v. Nanni* (2).

* Second Appeal No. 974 of 1911 from a decree of A. Sabonadiere, District Judge of Aligarh, dated the 19th of May, 1911, reversing a decree of Banke Behari Lal, Subordinate Judge of Aligarh, dated the 4th of January, 1910.

(1) (1897) I. L. R., 20 All., 78.

(2) Weekly Notes, 1886, p. 137.

Babu *Sital Prasad Ghosh*, for the respondent, contended that the application was time-barred. He cited *Sundar Singh v. Doru Shankar* (1).

Benole Behari was heard in reply.

KARAMAT HUSAIN and TUDBALI, JJ. :—In this case the decree-holder obtained a simple money decree against the judgement-debtor on the 19th of December, 1896. Various infructuous applications were made for execution of the decree, and the decree-holder, on the 15th of December, 1908, applied for the transfer of the decree from the court at Agra, to that at Aligarh. The application was granted on the 24th of February, 1909. He, then, on the 23rd March, 1909, applied to the court at Aligarh for execution. The court came to the conclusion that the application, dated the 23rd of March, 1909, was barred by the 12 years' rule of limitation. The decree-holder has preferred an appeal to this Court, and his learned vakil argues that the application in question is an application in continuation of the application for transfer, dated the 15th of December, 1908, and is thus not barred by limitation. In support of this contention reliance is placed upon *Ram Sahai v. Nanni* (2). It lays down in substance that an application for transfer is tantamount to an application for execution. The learned vakil for the judgement-debtor relies upon *Sundar Singh v. Doru Shankar* (1) in which a Bench of this Court was of opinion that an application for transfer was not an application for execution of a decree, though they rejected the application for revision on another ground. We are of opinion that an application for execution can in no sense of the words be regarded as an application in continuation of an application for transfer of a decree from one court to another. In order that an application may be a continuation of another application, it is necessary that the two applications be of the same nature, and the application for transfer being an application of an entirely different nature from that for execution of a decree, we agree with the view taken by the learned Judges in *Sundar Singh v. Doru Shankar* in preference to that expressed in *Ram Sahai v. Nanni*. We, therefore, dismiss the appeal with costs.

Appeal dismissed.

(1) (1897) I. L. R., 20 All., 78. (2) Weekly Notes, 1886, p. 137.