

that the property ought to be sold, the share-holders other than the applicant could under section 3, have applied for a valuation and the court in that case should have ordered a valuation to be made. Neither of these proceedings appears to have been taken. There being no application either under section 2 or under section 3, the court was not competent to make the order passed by it. We must, therefore, set aside its order of the 16th of May, 1912. It will be open to the parties or such of them as may choose to do so, to ask the court to take action under section 2, and in that case, it will be open to other share-holders to apply under section 3, and if such application be made, it will be the duty of the court to proceed under the provisions of sections 2 and 3. The order complained of is an illegal order. We accordingly allow the appeal, and set aside that order. Under the circumstances we direct the parties to pay their own costs in both courts.

Appeal allowed.

Before Mr. Justice Banerji and Mr. Justice Ryves.

TODAR MAL AND OTHERS (JUDGEMENT-DEBTORS) v. PHOLA KUNWAR
(DECREE-HOLDER)*

Act No. IX of 1908 (Indian Limitation Act), schedule I, article 128—Execution of decree—Limitation—Step in aid of execution—Application for transfer of decree—Civil Procedure Code (1882), section 228.

Held, that an application made to the court passing a decree to transfer it for execution to another court is an application to take a step in aid of execution within the meaning of article 128 of the first schedule to the Indian Limitation Act, 1908. *Chandra Nath Gossami v. Gurroo Prosunno Ghose* (1) followed;

THE facts of this case were as follows :—

A preliminary decree for sale was passed on the 1st of September, 1897, and it was made absolute on the 17th of November, 1900. The last application for execution, admittedly within time, was made on the 11th of May, 1906. On the 5th of September, 1908, the decree-holder applied to the court at Bareilly, which had passed the decree, to transfer it for execution to the court at Shahjahanpur. This application was made under section 228 of the Code of Civil Procedure, 1882. The certificate asked for was granted, and thereupon an application for execution was made in the court at Shahjahanpur on the 8th of February, 1910.

* First Appeal No. 43 of 1913, from a decree of Gokul Prasad, Subordinate Judge of Shahjahanpur, dated the 12th of September, 1912.

(1) (1895) I. L. R., 22 Calc., 375.

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The judgement-debtors took objection that execution of the decree was time-barred. This objection was disallowed by the executing court, and the judgement-debtors thereupon appealed to the High Court.

Munshi *Gobind Prasad*, for the appellant.

Babu *Sital Prasad Ghosh* and Babu *Benode Bihari*, for the respondents.

BANERJI and RYVES JJ :—This appeal arises out of an application for the execution of a decree, and the question to be determined is whether the application is time-barred. A preliminary decree for sale was passed on the 1st of September, 1897, and it was made absolute on the 17th of November, 1900. The last application for execution, admittedly within time, was made on the 11th of May, 1906. On the 5th of September, 1908, the decree-holder applied to the court at Bareilly, which had passed the decree, to transfer it for execution to the court at Shahjahanpur. This application was made under section 223 of the Code of Civil Procedure, 1882. The certificate asked for was granted, and thereupon an application for execution was made in the court at Shahjahanpur on the 8th of February, 1910. It is this application which the appellants contend is time-barred. The court below has held against the appellants, and in our judgement its decision is right. The present application for execution would be within time if the application of the 5th of September, 1908, was one to take a step in aid of execution, within the meaning of article 182, schedule I, of the Limitation Act. No application for execution could be made in a district outside the jurisdiction of the court which passed the decree unless that court made an order transferring the decree for execution. An application for transfer of the decree is, therefore, an essential and necessary step preliminary to the making of an application for execution in a court which is not the court which passed the decree. Such an application is clearly an application to take a step in aid of execution. This was so held by the Calcutta High Court in *Chundra Nath Gossami v. Gurroo Prosunno Ghose* (1), and we agree with that ruling. We dismiss the appeal with costs.

Appeal dismissed.

(1) (1895) I. L. R., 22 Calc., 375.