

Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.

AMINA BIBI (JUDGEMENT-DEBTOR) * BANARSI PRASAD (DECREE-HOLDER),*
*Act No. IX of 1908 (Indian Limitation Act), schedule I, article 182—Execution
of decree—“ Step in aid of execution ” - Substituted service.*

1914
 May, 2.

Held that an application by a decree-holder seeking to execute his decree for substituted service on the judgement-debtor is an application to take some step in aid of execution within the meaning of article 182 (5) of the first schedule to the Indian Limitation Act, 1908. *Pitam Singh v. Tota Singh* (1) referred to.

THIS was a decree-holder's appeal arising out of an application for execution, against assets of the deceased in the hands of his widow, of a decree which had been granted against one Amir Ahmad. The principal objection taken by the widow was that execution of the decree was barred by limitation, the present application being made more than three years after the last previous application for execution. The facts of the case are fully stated in the judgement of the Court.

Dr. *Satish Chandra Banerji*, for the appellant.

Mr. *J. Nehru*, (for the Hon'ble Pandit *Moti Lal Nehru*) and *Munshi Gulzari Lal*, for the respondents.

MUHAMMAD RAFIQ and PIGGOTT, JJ.—This appeal has arisen out of proceedings in execution. The decree-holder Banarsi Prasad obtained a simple money decree on the 24th of August, 1900, against one Amir Ahmad. The latter died leaving two widows, a son, a daughter and two paternal uncles as his heirs. He died indebted to a considerable extent and his creditors had obtained decrees against him. Banarsi Prasad made several attempts to execute his decree and it was paid off partially in 1905. On the 16th of March, 1909, Banarsi Prasad filed an application for execution of his decree against the present appellant, Musammam Amina Bibi, one of the widows of Amir Ahmad. The decree-holder asked for attachment and sale of certain property in the possession of Amina Bibi alleging it to have originally belonged to Amir Ahmad, the judgement-debtor. As this application of the 16th of March, 1909, was filed more than a year after the last application for execution the court ordered notice to issue to Amina Bibi. The notice was not served on her, and on the 2nd of

* First Appeal No. 188 of 1913, from a decree of Baijnath Das, Subordinate Judge of Bareilly, dated the 14th of April, 1913.

(1) (1907), I. L. R., 29 All., 301.

1914

AMINA BIBI
v.
BANARSI
PRASAD.

August, 1909, the decree-holder made an application giving a fresh address and asking for issue of a fresh notice to Amina Bibi. Notice again came back unserved, and on the 24th of August, 1909, the decree-holder again filed a second application asking for substituted service, on the ground that, as Amina Bibi was a *pardanashin* lady, it was difficult to serve notice on her in the ordinary manner. On the date fixed for hearing the pleader for the decree-holder stated that he would be satisfied if another attempt were made by the process-server accompanied by a servant of the decree-holder to serve Musammat Amina Bibi. The request of the pleader for the decree-holder was allowed and notice was issued and served on her. No further steps seem to have been taken after service of the notice to her until the 12th of July, 1912, when a fresh application was made for execution. By that application the decree-holder sought to attach and sell some portion of the personal property of Amina Bibi, which he described as having originally belonged to the judgement-debtor, Amir Ahmad. Amina Bibi put in objections. She said that the property sought to be attached was her personal property and was not liable to attachment and sale in execution of the decree against her husband. For the decree-holder it was alleged that, even if the property sought to be attached and sold was the personal property of Amina Bibi, it was still liable under the decree against her husband as she had received considerable assets of her husband which she had not accounted for. The learned Subordinate Judge held that the property which the decree-holder was seeking to attach and sell was the personal property of Amina Bibi, but he (the decree-holder) was at liberty to prove his allegation that certain assets of her husband had come into her hand. Subsequently to that order the parties admitted that Musammat Amina Bibi had realized Rs. 30,000, as profits from the landed estate of her husband. She, however, objected to her liability to pay off the decree of Banarsi Prasad on several grounds. She said that the application of the 12th of July, 1912, was barred by limitation and that the profits realized were in respect of property which had been gifted by Amir Ahmad to his other widow, Musammat Haidari, and the realization of profits of that property by Amina Bibi could not be said to be assets of her deceased husband. There were

some other objections taken which need not be mentioned here. The learned Subordinate Judge disallowed all objections and allowed execution of the decree to proceed. Musammat Amina Bibi has come up in appeal to this Court and she repeats two of her objections to the execution of the decree. She contends that the application for execution is barred by limitation and that she is liable to the extent of $\frac{1}{4}$ th of her husband's debt because her share as a widow in the property is only $\frac{1}{4}$ th. We think that neither of the contentions of the appellant has any force. The limitation is saved by the application of the 24th of August, 1909. That a similar application has been held to be a step in aid of execution is borne out by the ruling in *Pitam Singh v. Tota Singh* (1). Her second objection also fails because she is in possession of the assets of her husband and she is liable to the extent of those assets to the creditors of her husband. Her allegation that she will have to account for the assets to the other heirs of her deceased husband is true, but she can always say that she had to pay so much for the satisfaction of the decree of her husband for which all the heirs were liable. The appeal fails and is dismissed with costs.

Appeal dismissed.

FULL BENCH.

Before Sir Henry Richards, Knight, Chief Justice, Justice Sir Pramada Charan Banerji and Mr. Justice Tudball.

GULZARI MAL AND ANOTHER (PLAINTIFFS) v. JAI RAM (DEFENDANT).
 Act (Local) No. II of 1901 (Agra Tenancy Act), section 194—Lambardar—
 Right of lambardar to eject tenants—Suit in ejectment—Other co-sharers not
 necessary parties.

Held that when a lambardar in a lambardari village sues to eject a tenant he is not bound to join the other co-sharers as parties.

Semle that section 194 of the Tenancy Act was not intended to apply to the case of a lambardari village. *Bishambhar Nath v. Bhallo* (2) distinguished.

THIS was an appeal under section 10 of the Letters Patent from a judgement of a single Judge of the Court. The facts of the case appear from the judgement under appeal, which was as follows:—

* Appeal No. 97 of 1913 under section 10 of the Letters Patent.

(1) (1907) I. L. R., 29 All., 301.

(2) (1911) I. L. R., 34 All., 98.

1914

AMINA BIBI
 v.
 BANARSI
 PRASAD.

1914
 May, 2.