doubt been some delay on the part of the plaintiffs in instituting the present suit. But it appears from certain matters on the record that they have been engaged in other litigation since the death of their mother. We think that the decision of the court below was wrong, and that it would be very dangerous to hold that the parties could evade the law by a pretended dispute and family settlement. We allow the appeal, set aside the decree of the court below, and decree the plaintiff's claim with costs in all courts.

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Appeal allowed.

Before Mr. Justice Piggott and Mr. Justice Walsh.

ABDUL KARIM (PETITIONER) *v.* ISLAMUN-NISSA BIBI AND OTHERS (OPPOSITE PARTIES)*.

1916 *February*, 28.

Act No. IX of 1908 *(Indian Limitation Act), Schedule I, articles* 165 *and* 181—*Civil Procedure Code* (1908), *section* 47—*Execution of decree—Limitation—Application by judgement-debtor to be restored to possession of immovable property taken by the decree-holder in excess of that decreed.*

Held that the application of a judgement-debtor for restoration of immovable property seized by the decree-holder in excess of what has been decreed, is one under section 47 of the Code of Civil Procedure, and is governed by Article 181 of schedule I to the Indian Limitation Act. *Ratnam Ayyar* v. *Krishnadoss Vital Doss* (1), *Har Dan Singh* v. *Lachman Singh* (2), dissented from.

THE facts of this case were as follows :—

A decree, based upon an arbitration award, was passed on the 31st of March, 1911, for possession of a certain share out of several properties. In execution thereof the decree-holders obtained possession of a certain amount of property on the 19th of November, 1911. On the 18th of December, 1911, the judgement-debtor made an application in the execution court, complaining that the decree-holders had obtained possession over a larger share of the property than was awarded to them by the decree, and invoking the aid of the court under sections 151, 152 and 153 of the Code of Civil Procedure for restoration of the excess share. The court was of opinion that these sections were

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* Second Appeal No. 1047 of 1915, from a decree of G. C. Badhwar, Additional Judge of Saharanpur, dated the 29th of April, 1915, reversing a decree of Saiyad Abdul Hasan, Subordinate Judge of Saharanpur, dated the 1st of May, 1914.

(1) (1898) I.L.R., 21 Mad., 494. (2) (1900) I.L.R., 25 All., 348.

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not applicable, and the judgement-debtor withdrew his application and it was accordingly dismissed on the 2nd of July, 1913. On the 11th of July, 1913, the judgement-debtor made an application under section 47 of the Code of Civil Procedure for the same relief. It was entertained and allowed in part on the merits. On appeal the lower appellate court rejected the application as being barred by limitation under article 165, of the Limitation Act. The judgement-debtor appealed to the High Court.

Munshi *Haribans Sahai*, (with him The Hon'ble Dr. *Tej Bahadur Sapru*), for the appellant:—

Article 165 of the first schedule to the Limitation Act is intended to apply to cases where a person other than a judgement-debtor has been wrongfully dispossessed of property under colour of execution of a decree; i.e., to applications under order XXI, rule 100, of the Civil Procedure Code. It does not apply to a case where a judgement-debtor himself complains of wrongful dispossession not warranted by the decree and applies for restoration of possession. Such an application is one under section 47 of the Code of Civil Procedure and is governed by article 181 of the Limitation Act. In *Arjun Singh* v. *Machchal Singh* (1) and *Lalman Das* v. *Jagan Nath Singh* (2), it was held that where a decree-holder had, in execution of his decree, seized or caused to be sold property in excess of what was warranted by the decree, the remedy of the judgement-debtor was not by way of a fresh suit but by an application under section 244 of the Code of 1882, and that the limitation applicable to such an application was that laid down by article 178 of the Limitation Act of 1877, which corresponds to the present article 181. The lower appellate court has relied on the cases of *Ratnam Ayyar* v. *Krishna Doss Vital Doss* (3) and *Har Din Singh* v. *Lachman Singh* (4). The first of these cases gives no reasons for its decision; nor did the point directly arise, for the applicant was a minor and it was held that section 7 of the Limitation Act of 1877, saved the application from being time-barred. The second was not a case of excessive execution like the present; and, moreover, the case

(1) (1906) 3 A.L.J., 601. (2) (1900) I.L.R., 22 All, 376.

(3) (1898) I.L.R., 21 Mad., 494. (4) (1900) I.L.R., 25 All., 343.

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was decided on the merits. Order XXI, rule 100, provides a special summary remedy which is available only to a stranger to the decree. Where the immovable property of a stranger is wrongfully seized under colour of execution, he has the option, if he chooses to adopt the speedy remedy provided by the said rule; and in that case article 165 provides that he must seek it within 30 days; but if he does not choose to adopt it he can bring a regular suit for possession any time within 12 years. This latter remedy by way of a suit is denied to a judgement-debtor, as was pointed out in the cases in 3 A.L.J.R., and I.L.R., 22 All., cited above. To hold that article 165 applies to an application like the present one made by a judgement-debtor would mean that if he does not come forward within 30 days his remedies are gone for ever and a person who has wrongly seized property without the shadow of a title becomes full owner on the lapse of that very short period. If a decree-holder realizes one rupee in excess of what the decree awards him the judgement-debtor has three years within which to seek redress; *Mula Raj* v. *Debi Dihal* (1), but if it is immovable property that has been seized in excess, then he has only 30 days, if article 165 applies. He has 12 years against any other person, but only 30 days against the decree-holder. These anomalies show that it could not have been the intention of the Legislature to make article 165 applicable to the case of a judgement-debtor. Further, this is a case where the doctrine of reviver can properly be applied and the present application may, if necessary, be regarded as in continuation of the first application for the same relief, which was dated the 18th of December, 1911, within 30 days of the dispossession. The mere quoting of wrong sections would not make that application unmaintainable and it could be amended by substituting the correct section, namely section 47. The court could act under order XLI, rule 33, of the Code of Civil Procedure.

Mr. *Nihal Chand*, for the respondents:—

There is nothing in the language of article 165 to warrant the construction sought to be put upon it by the appellant. The language is general and wide enough to include the case of a judgement-debtor as well as of a stranger to the decree. Article

(1) (1885) I.L.R., 7 All., 371.

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181 can only be invoked in aid by an applicant when there is no other article applicable; here, article 165 is applicable. I rely on the cases of *Ratnam Ayyar* v. *Krishna Doss Vital Doss* (1) *Har Din Singh* v. *Lachman Singh* (2) and *Raja Ram* v. *Rani Itraj Kunwar* (3). Although in the second of these cases there was also a decision on the merits yet it was distinctly pronounced, at page 347 of the report, that the decision on the merits was unnecessary after the decision, that the judgement-debtor's application was barred by article 165. To limit the operation of article 165 to applications made by strangers alone, would be to do voilence to plain and unequivocal language and to introduce words into that article which do not exist there. The possible hardship to a party that may result from interpreting a provision of law according to its plain meaning is not to be considered by the courts but should be left to the province of the Legislature. The law as laid down is the law to be administered. If the Legislature had intended article 165 to apply only to applications under order XXI, rule 100, it would have introduced in that article the words "any person other than the judgement-debtor" which occur in order XXI, rule 100. It is not an anomaly that the judgement-debtor should not have the same latitude as is allowed to a perfect stranger in cases of wrongul execution. The judgement-debtor is a party to the whole proceedings and knows about the matter. If there is any wrongful execution as against him he ought to be prompt to seek redress, so that the matter which has been adjudicated in the suit between the parties may arrive at the conclusive stage as speedily as possible. Then, the first application having been withdrawn and dismissed it could not now be amended or revised. There was no prayer for amendment or reviver in the lower court.

PIGGOTT and WALSH, JJ. :—In this case an application was made to the Subordinate Judge, by the judgement-debtors under section 47 of the Civil Procedure Code, complaining of a seizure of immovable property belonging to them, made by the decree-holders in excess of their rights under the decree. The Subordinate Judge, after an elaborate inquiry, has found as a fact that the decree-holders took advantage of some ambiguous language in

(1) (1898) I.L.R., 21 Mad., 494. (2) (1900) I.L.R., 25 All., 343.
(3) (1914) 17 Oudh Cases, 94.

the decree, and deliberately and dishonestly seized more than their decree entitled them to seize.

The decree was dated the 31st of March, 1911. The improper seizure took place on the 19th of November, 1911. The application in question was made to the Subordinate Judge on the 7th of July, 1913. This delay of nineteen months was due to the judgement-debtors having mistaken their rights and wasted time over a fruitless application. The reason, however, for the delay is immaterial. The delay itself has given rise to the question we have to decide.

The improper seizure by the decree-holders in excess of their rights under the decree, was clearly a question arising between the parties to the suit within the meaning of section 47. The application of the judgement-debtors was clearly made under that section.

On appeals being brought by both the decree-holders and the judgement-debtors, the District Judge, holding himself, as we think quite properly, bound by certain authorities mentioned hereafter, decided that the judgement-debtor's application was time-barred, on the ground that article 165 of the Limitation Act applied to it, and that the time of thirty days had run out.

We are clearly of opinion that when the matter is closely examined this view is untenable.

In a technical matter of this kind, when the language relied upon does not in express terms cover the case, it is of the highest importance to realize the position of the parties and the context in which the language is used. Where the interpretation sought to be put upon the words is arrived at by implication and by reference, the court ought not to adopt a construction which has a restricting and penalizing operation unless it is driven to do so by the irresistible force of language.

Now in the ordinary course of things a person who is wrongfully dispossessed of immovable property has a remedy by a suit for possession only. In matters arising out of the execution of decrees, possibly because they are the indirect result of the active interference of the court itself, the Legislature has provided two exceptions. The judgement-debtor must apply to the court under section 47. If he is dispossessed of land which is outside the

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decree, and he does not so apply, he loses his land. He cannot bring a suit. He is worse off than the ordinary person wrongfully dispossessed. On the other hand, if a third person outside the suit is unfortunately the victim of some mistake in the decree itself, or by the decree-holder, he may apply to the court in a summary manner, and if he is right he may be put back into possession. That is expressly provided by order XXI, rules 100 and 101. Such a person is better off than the ordinary person wrongfully dispossessed. He can bring a suit, of course, within twelve years; but he can, if he pleases, apply summarily for possession. That is a privilege of a peculiar and special character, from which the judgement-debtor is excluded in express terms.

It is not surprising to find such a privilege accompanied by certain restrictions. By article 165 of the Limitation Act of 1908, (the article now in question) such an application must be made within thirty days. The article is in these terms:—"*Description of application*:—Under the Code of Civil Procedure, 1908, by a person dispossessed of immovable property and disputing the right of the decree-holder, or purchaser at a sale in execution of a decree, to be put into possession."

"*Period of limitation*:—Thirty days, from the date of dispossession."

Now that is a precise and compendious description of the right given, and the application allowed to "a person other than the judgement-debtor" by order XXI, rules 100, 101. It certainly applies to such an application and there is no other provision in the Code which in the terms it employs at all corresponds to it. We think it quite certain that when the Legislature enacted article 165, it had the provisions now contained in order XXI, rules 100, 101 in mind. That is to say, it intended article 165 to apply to such an application.

The argument for the view adopted in the reported cases, and followed by the District Judge in the case, is that the words are wide enough to include a judgement-debtor. Separated from their context this is true. A judgement-debtor is a "person", in such a case as this. Moreover, the judgement-debtor in his application under section 47 is complaining of the same sort of act as an applicant under order XXI, rule 100, would have to complain of. But the

moment it is realized that what the schedule to the Limitation Act consists of is an enumeration of suits, appeals, and applications of various kinds, and that the language of article 165 is merely a definition or description, all difficulty as to the use of the word "person" disappears. In our opinion the word "person" in that context, although wide enough to include a debtor, was never used in any other sense than that of a person who is authorized by order XXI, rule 100, to make an application of that description.

To hold otherwise would result in this, that if a judgement-debtor applied to the court under order XXI, rule 100, and adopted the language of article 165, his application would have to be dismissed because he is precluded from making an application of that description, and yet if he postpones applying under section 47 for more than thirty days, the language of the article is to be applied to him.

If anything were required, outside the context in which the article is used, to assist us to an interpretation of it, we should be entitled, indeed in our opinion we should be bound, to recognize, that to hold as has been held by the District Judge in this case involves depriving the judgement-debtors for ever of all title to a considerable portion of immovable property, because they did not make a summary application with regard to its seizure within thiry days. Such a result in the case of a person already in straitened circumstances appears to us to be something which it is safe to assume that the Legislature never intended, and which it certainly never enacted in direct terms.

We are aware that this decision involves our departing from two authorities of some standing, to each of which we need hardly say we have given every consideration.

The first case is that decided by the Madras Court, *Ratnam Ayyar* v. *Krishna Doss Vital Doss* (1). No reasons are given in the judgement nor was the decision necessary for the determination of that case. The second case was decided by this Court in the year 1900, *Har Din Singh* v. *Lachman Singh* (2). In that case the appellant who succeeded in upholding the view from which we are dissenting also succeeded on the merits. It is not

(1) (1897) I.L.R., 21 Mad., 494. (2) (1900) I.L.R., 25 All., 343.

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unlikely that the considerations which have weighed with us were over-shadowed by the precedent which the Madras Court had already created, and by the argument on the substantial merits of the case. Another authority was cited to us from Oudh. *Raja Ram* v. *Rani Itraj Kunwari* (1). There the Judicial Commissioner, while apparently entertaining doubts of his own, seems to have felt himself unable to break away from the two authorities we have mentioned.

We may add that we are not unmindful of the fact that in certain other cases of applications which may be made by a judgement-debtor, such as an application for setting aside a sale, the judgement-debtor is limited to thirty days. There are obvious reasons why such an application, if made at all, should be made promptly. But it is sufficient to say that each case must turn upon the language used, and that in the case of an application to set aside a sale, the limitation is expressly provided in unmistakable language. The learned District Judge had before him appeals by both parties challenging the decision of the first court on the merits. He has disposed of both appeals on the preliminary finding that the application of the present appellants was time-barred. We therefore set aside the decree of the lower appellate court and direct that court to re-admit both the appeals on to its pending file and dispose of them according to law. The costs of this appeal on the higher scale and the costs in the court below will abide the event.

Appeal decreed and cause remanded.

(1) (1914) 17 Oudh Cases, 94.