

Before Mr. Justice Chamier and Mr. Justice Figgott.

ABDUL RAFI KHAN AND OTHERS (DECREE-HOLDERS) v. MAULA BAKHSH
(JUDGEMENT-DEBTOR).*

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May, 27.

Execution of decrees—Limitation—Act No. IX of 1908 (Indian Limitation Act), Article 182, Schedule 1—Application in accordance with law—Civil Procedure Code (1908), Order XXI, rule 12.

The failure of a decree-holder to annex to an application for attachment of immoveable property in execution of a decree an inventory of the property to be attached with a reasonably accurate description of the same, as required by order XXI, rule 12 of the Civil Procedure Code, is not an application in accordance with law within the meaning of article 182 of the first schedule to the Indian Limitation Act of 1908. *Hira Lal v. Dulari Kuar* (1), *Mangal Sen v. Baldeo Prasad* (2) followed.

THE facts of the case were as follows :—

One Ali Bakhsh Khan obtained a decree in 1906. The appellants were his representatives in interest. The first application for execution was made in September, 1909, and struck off after satisfaction of a part only. The next application was made on the 24th of August, 1910, and struck off a few months later. The third application was made on the 23rd of August, 1913, and was struck off on the 6th of September, 1913, the decree-holders having failed to comply with the order of the court asking them to make certain amendments in the application and to attach a correct inventory of the property sought to be attached. The present application was made on the 4th of June, 1914, and was dismissed by the court below as barred by limitation. The decree-holders appealed to the High Court.

Dr. *Surendro Nath Sen*, for the appellants.

Babu *Pieri Lal Banerji* and Maulvi *Iqbal Ahmad*, for the respondent.

CHAMIER and FIGGOTT, JJ.—This is an appeal by the representatives of one Ali Bakhsh Khan, deceased, who obtained a decree on July 10th, 1906, against an order of the Subordinate Judge of Azamgarh dismissing the appellants' application for execution on the ground that it was barred by limitation. The decree as already stated was passed on July 10th, 1906. The first application for execution was made in September, 1909, and was struck off after the decree had been partly satisfied. The

* First Appeal No. 360 of 1914, from a decree of Suraj Narain Majju, Subordinate Judge of Azamgarh, dated the 27th of June, 1914.

(1) Weekly Notes, 1892, p. 3.

(2) Weekly Notes, 1892, p. 70.

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second application for execution was made on August 24th, 1910, and was ultimately struck off on March 24th, 1911. For the purposes of this appeal it may be assumed that the application of August 24th, 1910, was an application made in accordance with law to the proper court for execution of the decree. The third application for execution was made on August 23rd, 1913, and was struck off on September 6th, 1913, the decree-holder having failed to comply with the order of the court requiring him to make certain amendments in the application. The fourth application for execution was made on June 4th, 1914, and it is against the order of the court dismissing the fourth application that this appeal has been brought. The question for decision in the appeal is whether the third application of August 23rd, 1913, was an application made in accordance with law to the proper court for execution of the decree. When the application was presented the office reported that there were many mistakes in columns 6, 7 and 8 of the application. It was also noticed that the prayer for relief was irregular. The prayer was that by means of attachment and sale of the property of the judgment-debtor, a list of which would be filed afterwards, the balance of the decree, together with costs of the execution proceedings, might be recovered. It has been held in many cases that it is not every defect or mistake in an application for execution which obliges the court to hold that the application is not one made in accordance with law. Speaking generally the courts have set themselves to inquire whether an application in question is in substantial compliance with the law. For the purposes of this appeal we may disregard the mistakes and defects in columns 6, 7 and 8 of the application. But the failure of the decree-holder to annex to the application an inventory of the property to be attached with a reasonably accurate description of the same, as required by order XXI, rule 12 of the Code of Civil Procedure, stands on a different footing. In *Hira Lal v. Dulari Kuar* (1), this Court held that an application for attachment of immoveable property in execution of a decree, which did not contain the particulars required by section 237 of the Code of Civil Procedure of 1882, was not an application in

(1) Weekly Notes, 1892, p. 8.

accordance with law within the meaning of Article 179, Schedule II of the Limitation Act of 1877, and in *Mangal Sen v. Baldeo Prasad* (1), MAHMOOD, J., held that an application for execution of a decree by attachment of moveable property of the judgement-debtor, unaccompanied by an inventory of the property sought to be attached, was not an application in accordance with law within the meaning of Article 179, Schedule II of the Limitation Act of 1877. The learned Vakil for the appellants has been unable to refer us to any case in which these decisions have been disapproved. But he has referred us to several cases in which defective applications for execution have been amended beyond limitation and the courts have held that the amendment related back to the date of the application. Such cases have no bearing on the present appeal. Here although the decree-holder was given time to amend his application, he did not amend it, and it is impossible for us, some years afterwards, to allow him to amend an application which was struck off on account of his failure to comply with the order of the court requiring him to amend it. We must follow the decisions of this Court reported in the Weekly Notes for 1892 and hold that the application for execution put in on August 23rd, 1913, was not an application in accordance with law within the meaning of Article 182, Schedule I of the Limitation Act of 1908 which governs the present case. If the application of 1913 is put out of the way, the present application of June 1914, is clearly barred by limitation as held by the court below. The appeal fails and is dismissed with costs.

Appeal dismissed.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudbal,
SABODRA BIBI (PLAINTIFF) v. BAGESHWARI SINGH AND ANOTHER
(DEFENDANTS).*

Pre-emption—Right of pre-emptor to put vendor to proof of title—Suit must be for entire property sold.

Held that a pre-emptor is not entitled in a pre-emption suit to put the vendor on proof of his title to the property which he purports to sell. The principle of pre-emption is substitution. A pre-emptor is therefore bound to

* Second Appeal No. 821 of 1914, from a decree of E. M. Nanavati, Subordinate Judge of Jaunpur, dated the 2nd of March, 1914, confirming a decree of Kesri Narain Chand, City Munsif of Jaunpur, dated the 25th of November, 1913.

(1) Weekly Notes, 1892, p. 70.

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