Before Mr. Justice Pigot and Mr. Justice Macpherson.

1891 *August* 29.

KRISTO CHURN DASS AND OTHERS (JUDGMENT-DEBTORS) *v.* RADHA CHURN KUR (DECREE-HOLDER).*

Limitation (Act XV of 1877), Sch. II, Art. 179, para. 2—Execution of Decree—Appeal by plaintiff against part of decree making all defendants respondents—Execution of part of decree not appealed against.

On the 23rd March 1886 the plaintiff obtained a decree in the Court of first instance against five defendants, declaring his right to certain specific immovable property, which was, however, modified on an appeal preferred by the defendants, the decree of the lower Appellate Court giving the plaintiff a decree for only two-thirds of the property claimed, and dismissing his suit in respect of the remaining one-third in favour of defendants Nos. 2 and 4. The lower Appellate Court's decree was dated the 13th July 1886. Against that decree plaintiff preferred a second appeal to the High Court, making all the defendants respondents, which appeal was, however, dismissed on the 16th June 1887. The plaintiff on the 13th June 1890 applied for execution of the decree in his favour in respect of the two-thirds of the property held to belong to him, and defendants Nos. 1 and 5 objected on the ground that the right to execution was barred, limitation running from the 13th July 1886, the date of the lower Appellate Court's decree in the plaintiff's favour.

Held that limitation ran from the 16th June 1887, and that the application was not therefore barred. All the defendants were parties to the second appeal, and the Court to which the application was made for execution was not bound, before allowing execution, to go into all the circumstances of that appeal, and consider whether the decree of the lower Appellate Court in favour of the plaintiff for the two-thirds of the property was or was not practically secure; the High Court had all the parties before it, and, if it had been right to do so, might have altered the decree against any of them.

Quære—Whether under such circumstances the Legislature could have intended the Court executing a decree to go into questions so complicated, as to whether in such a case the whole decree was or might have been or become imperilled in the Court of Appeal, and whether the plain words of Article 179 might not be followed with less of possible inconvenience and complexity, even though in some cases it might result in execution of a

*Appeal from order No. 66 of 1891 against the order of R. H. Greaves, Esq., District Judge of Sylhet, dated the 3rd of December 1890, affirming an order of Baboo Koylash Chundor Mozumdar, Munsiff of that district, dated the 31st of July 1890.

decree going against a defendant a little more than three years after such decree was practically secure against him.

Nundun Lall v. *Rai Joykishen* (1) cited with approval.

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THIS was an appeal from an order of the District Judge of Sylhet, dismissing an appeal from an order of the Munsiff of that district passed on an application of Radha Churn Kur, the plaintiff (respondent in the appeal), for execution of a decree in his favour, and which latter order allowed such application and disallowed an objection taken thereto by some of the judgment-debtors, based on the ground that the right to execution of the decree was barred by limitation.

It appeared that on the 23rd March 1886, Radha Churn Kur obtained a decree in the Court of first instance against the appellants and others, five in number, who were defendants in the suit. Against that decree an appeal was preferred and resulted in the decree being modified by the lower Appellate Court, the plaintiff's claim as regards one-third of the property claimed in the suit being disallowed in favour of defendants Nos. 2 and 4, and his suit in that respect being dismissed, while the decree in his favour for the remaining two-thirds of the property was confirmed. The decree of the lower Appellate Court was dated the 13th July 1886. The plaintiff preferred a second appeal against that decree to the High Court, making all the defendants respondents, as he claimed the property as against all the defendants. That appeal was dismissed by the High Court on the 16th June 1887.

On the 13th June 1890 the plaintiff made his present application for execution of the decree in his favour as regards the two-thirds of the property, and in answer to the application defendants Nos. 1 and 5 filed objections, contending that the right to execution was barred by reason of the application being made more than three years after the date of the decree of the lower Appellate Court, which was passed on the 13th July 1886. They contended that although the application was made within three years of the date of the decree of the High Court, the appeal to that Court did not concern the plaintiff's right to the two-thirds share of the property in respect of which he now sought to execute his decree, and

(1) I. L. R., 16 Calc., 598.

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that the period of limitation therefore must be taken as running from the 13th July 1886.

The Munsiff held that, though there was no appeal to the High Court regarding the two-thirds share of the property, the objecting defendants were necessary parties to the appeal, the property in suit being claimed as against all the defendants, and that therefore clause 2 of Article 179 of Schedule II of the Limitation Act governed the case, and that the period of limitation must be counted from the date of the decree of the High Court. In support of his view he referred to the decisions in *Akshoy Kumar Nundi* v. *Chunder Mohun Chathati* (1), and *Nundun Lall* v. *Rai Joykishen* (2). He accordingly overruled the objection and allowed the application for execution.

Against that order the judgment-debtors appealed. The material portion of the judgment of the District Judge was as follows:—

"The application for execution of the decree was made within three years from that date (16th June 1887). On behalf of the appellants it is contended that the period within which the decree against them can be executed runs from the date of the decree of the lower Appellate Court. Appellant's pleader has referred to several rulings. He contends that the rulings in *Nundun Lall* v. *Rai Joykishen* (2), *Hur Proshaud Roy* v. *Enayet Hossein* (3), and *Sangram Singh* v. *Bujharat Singh* (4) support his case. I observe, however, that in each of the cases referred to in these rulings one of several defendants appealed. It was held that no question between the other defendants and the plaintiffs was involved. In the case now under consideration the plaintiff appealed and all the defendants were respondents; this fact is admitted by appellants' pleader, and it seems to me very important. I find also that there are rulings in *Gungamoyee Dassee* v. *Shib Sunker Bhuttacharjee* (5), *Basant Lal* v. *Najmunnissa Bibi* (6), and *Nur-ul-Hasan* v. *Muhammad Hasan* (7), which strongly support the respondent's case. I think that the words of clause 2,

(1) I. L. R., 16 Calc., 250.
(2) I. L. R., 16 Calc., 598.
(3) 2 C. L. R., 471.
(4) I. L. R., 4 All., 36.
(5) 3 C. L. R., 430.
(6) I. L. R., 6 All., 14.
(7) I. L. R., 8 All., 573.

Article 179 of Act XV of 1877 are clear. The appellants' pleader has not shown me any ruling which deals with circumstances similiar to those in this case. I dismiss the appeal with costs."

The judgment-debtors now appealed to the High Court.

Baboo *Lal Mohun Dass* for the appellants.

Baboo *Tara Kishore Chowdhry* for the respondent.

The judgment of the High Court (PIGOT and MACPHERSON, JJ.) was as follows:—

The respondent obtained a decree against the appellants on March 23rd, 1886. On appeal the decree was modified: the claim for one-third share of the property claimed by the defendants 2 and 4 was dismissed, and the decree for the remaining two-thirds affirmed on the 13th July 1886. On appeal to the High Court the appeal was dismissed on June 16th, 1887.

In this appeal all the defendants were made respondents, and not merely those in respect of whose one-third claim the plaintiff's suit had been dismissed.

The plaintiff decree-holder now seeks for execution of the decree to the extent of a two-thirds share of the property and costs. Judgment-debtors Nos. 1 and 5 object that execution is barred because not applied for within three years from the date of the order of the lower Appellate Court of the 13th July 1886. The Courts below have both rejected this objection and the defendants appeal.

They rely on the principle laid down in the case of *Wise* v. *Rajnarain Chuckerbutty* (1), and on some of the cases decided since that Full Bench decision.

We quite agree with the opinion expressed on this subject by TOTTENHAM and GORDON, JJ. in *Nundun Lall* v. *Rai Joykishen* (2), at page 602:—"In one of these cases, namely, *Gungamoyee Dassee* v. *Shib Sunkur Bhuttacharjee* (3), the Judges went entirely upon the words of the article, and it seems to us that, in a question of limitation, we ought to abide as strictly as possible by the terms of the law. We should not be disposed to import into the law any further restrictions as to the rights of parties to sue and to execute their

(1) 10 B. L. R., 258. (2) I. L. R., 16 Calc., 598 (602).
(3) 3 C. L. R., 430.

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decrees than the law itself expressly provides; but we are bound to recognise the fact that the law has been by interpretation, so to say, modified by decisions of this Court and the High Court of Allahabad. If, therefore, those cases were on all fours with the present one, we should feel bound to follow the decisions, unless we thought it right to refer the matter to a Full Bench. But we think that the present case does not come exactly under the rule laid down in those cases. In those cases in which execution was held to be barred as against parties who were not parties to the appeal, the decision rests expressly upon the ground that the appeal made by one did not and could not affect the decree as against others of the parties concerned in the case. In one case a former Chief Justice, Sir Richard Couch, in delivering judgment said that the decree being against various parties for various reliefs in reality amounted to several decrees, although embodied in one paper. The rule governing this decision appears to be shortly this, that unless the whole decree was imperilled by the particular appeal which was preferred, the decision in the appeal would not alter the period of limitation in respect of execution of the decree as between other parties to the suit."

We would even go so far as to express a doubt whether the Legislature can have intended the Court executing a decree to go into questions so complicated as those which must sometimes arise in determining whether, in such a case as the present, the whole decree was, or might have been, or become, imperilled in the Court of Appeal. It does appear to us that the plain meaning of the words of Article 179 might be followed with less of possible inconvenience and complexity, even though in some cases execution against a defendant, the decree against whom was practically secure, might have been operative against him a little more than three years after it was so practically secure. But in the state of the authorities this doubt, if well founded, could only be given effect to by a Full Bench.

The authorities just referred to decided after the Full Bench in *Wise* v. *Rajnarain Chuckerbutty* (1), do not, however, constrain us, in the present case, to hold execution to be barred. All the defendants were parties to the appeal: and the Court is not, we think, bound,

(1) 10 B. L. R. 258.

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before allowing execution, to go into all the circumstances of that appeal, consider whether the decree against the present appellants was most probably practically secure, and, on concluding that it was so, refuse execution. Here the High Court had all the parties before it, and had it been right to do so could have altered the decree against any of them.

We think we are at liberty to apply the terms of the Article in the case in their plain meaning: and we agree with the Courts below and dismiss the appeal with costs.

Appeal dismissed.

H. T. H.

Before Mr. Justice Pigot and Mr. Justice Banerjee.

RAM CHUNDER CHUCKRABUTTY (PLAINTIFF) *v.* GIRIDHUR DUTT AND OTHERS (DEFENDANTS).*

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Bengal Tenancy Act (VIII of 1885) ss. 52, 188—Co-sharers—Suit by one co-sharer, entitled to collect rent separately, for additional rent for land brought under cultivation, payable in terms of lease—Joint proprietors—Rent suit—Collection of rent separately.

A tenant held 19½ bighas of land under a kabuliyat granted by three joint landlords, which provided, *inter alia*, that rent was to be paid at the rate of Re. 1-8 per bigha in respect of 8 bighas only, and that the remaining 11½ bighas which were then unculturable, should, when they became fit for cultivation, be assessed with rent at the same rate. One of the co-sharers, who was admittedly entitled, under arrangement, to collect his share of the rent separately, instituted a suit against the tenant, joining his co-sharers as defendants, to recover arrears of his share of the rent for a specific period, and claimed to be entitled to recover rent in respect of the whole 19½ bighas, on the allegation that the 11½ bighas had then become fit for cultivation, and were therefore liable to be assessed with rent at the rate mentioned in the kabuliyat. The tenant objected that, having regard to the provisions of section 188 of the Bengal Tenancy Act, the suit would not lie at the instance of the plaintiff alone.

Held—That the suit did lie. It was clearly not one for enhancement of rent in the sense in which that term is used in the Bengal Tenancy Act,

* Appeal from Appellate Decree, No. 842 of 1890, against the decree of Baboo Krishna Mohun Mookerjee, Subordinate Judge of Zillah Khoolnah, dated the 16th April 1890, modifying the decree of Babao Norendra Krishno Dutt, Officiating 1st Munsiff of Bágirhat, dated the 27th May 1889.