

Before Sir Henry Richards, Knight, Chief Justice, and Justice  
Sir Pramaña Charan Banerji.

RAMJI LAL, (DECREE-HOLDER) v. KARAN SINGH AND ANOTHER  
(JUDGEMENT-DEBTORS). \*

*Civil Procedure Code (1908), order XXI, rule 2: order XXXIV, rules 4 and 5—Preliminary decree—Decree, ordering payment by instalments and in default of payment of any one instalment, ordering execution for whole amount—Default made—Payment out of court—Application for decree absolute—Act No. IX of 1908 (Indian Limitation Act), schedule I, article 181.*

*Held* that order XXI, rule 2, of the Code of Civil Procedure has no application to a decree for sale on a mortgage by which the mortgage money happens to be made payable by instalments.

THE facts of this case were as follows:—

On the 24th of July, 1909, a preliminary decree under order XXXIV, rule 4, was passed in terms of a compromise that defendants should pay Rs. 600 by six-monthly instalments of Rs. 37-8-0, and in default of any instalment being paid the plaintiff would be at liberty to realize the entire amount claimed. On the 29th of April, 1915, the decree-holder applied under order XXIV, rule 5, clause 2, for a final decree, on the ground that the judgement-debtors had paid the first ten instalments but had failed to pay the eleventh instalment, which fell due on the 2nd of February, 1915. The judgement-debtors opposed the application as being time-barred. The Munsif of Ghaziabad held the application to be time-barred as "the money alleged to have been paid by the judgement-debtors out of court was *money payable under a decree* within the meaning of order XXI, rule 2, of Act V of 1908.

In appeal the District Judge of Meerut upheld the decision of the learned Munsif. The decree-holder appealed to the High Court.

Pandit Radha Kant Malaviya, for the appellant:—

The present application is not time-barred. Both the lower courts have misunderstood the nature of the present application. This is not an application to execute a decree, but an application asking for the preparation of a final decree. The new Act has put an end to the conflict, and under the new Act such an application is not one in execution of a decree, and so order XXI,

\* Second Appeal No. 588 of 1916, from a decree of Bans Gopal, Subordinate Judge of Meerut, dated the 16th of January, 1917, confirming a decree of Kashi Prasad, Munsif of Ghaziabad, dated the 17th of September, 1915.

rule 2, clause (3), does not prevent the judgement-debtor from proving the payment of the first ten instalments.

Munshi *Lachmi Narain*, for the respondent :—

The payment of the instalments not having been certified no court can recognize the payment and the application is time-barred, as held in *Gokul Chand v. Bhika* (1).

Pandit *Radha Kant Malaviya*, was not called upon to reply.

RICHARDS, C. J., and BANERJI, J. :—This appeal arises out of a suit which was originally instituted on foot of a mortgage. The suit resulted in a compromise decree which provided that the defendants should pay Rs. 600 by certain instalments therein mentioned and that in default of any one of the instalments, the property should be sold for the full amount of the claim and costs. It is alleged (and we may assume for the purposes of this appeal) that the judgement-debtors paid several of the instalments. According to the decree-holder default was first of all made on the 2nd of February, 1915. Such default having been made, the present application was preferred for a final decree under order XXXIV, rule 5. The court below has dismissed the application as being barred by time. The court relying on a decision of this Court (affirmed by the decision reported in I.L.R., 38 Allahabad, at page 204) has dismissed the application as barred by time. The case referred to was a case of a simple money decree, and the application was for execution. Order XXI, rule 2, clause (3), provides that any payment or adjustment which has not been certified in the prescribed manner shall not be recognized by any court executing the decree. The application in the present case was not an application for execution of the decree. Under the present Code, an application for a final decree is not an application for execution. The case cited therefore has no application. The court below seems to have applied article 182 of the first schedule to the Limitation Act. The proper article in our opinion is article 181, and limitation should run from the time when default was made. It will be for the court below to ascertain when default was made if at all. We must allow the appeal, set aside the decision of both the courts below, and remand the case to the court of first instance through the lower

(1) (1914) 12 A. L. J., 387.

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appellate court with directions to re-admit the application under its original number in the file and proceed to hear and determine the same according to law. Costs will be costs in the cause.

*Appeal allowed and cause remanded.*

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

KRISHNA SAH (OBJECTOR) v. THE COLLECTOR OF BAREILLY  
(OPPOSITE PARTY.) \*

*Act No. I of 1894 (Land Acquisition Act), section 9—Procedure—Occupier of land sought to be compulsorily acquired—Notice.*

Under section 9, clause (3), of the Land Acquisition act, 1894, the occupier of land, concerning which a public notice has been given under clause (1) of the section, is entitled to such notice as will give him, in the same manner as the persons mentioned in clause (2) fifteen days interval in which to state before the Collector the nature of his interest in the land and the particulars of his claim for compensation, etc.

THIS was an appeal by the occupier of land the subject of proceedings under the Land Acquisition Act, 1894, from an order of the District Judge of Bareilly confirming the award of the Collector. The award was confirmed upon the sole ground that the appellant did not state "the nature of his interest in the land and the particulars of his claim to compensation for such interest" by way of objection under section 9, clause (2), of the Act. The main objection of the appellant involved a question of procedure under the Act, and was to the effect that the notice which had been served on him under section 9, clause (3), did not give him the statutory period, namely, 15 days, to which he was entitled for the purpose of representing his case to the Collector.

Pandit *Uma Shankar Bajpai*, for the appellant.

Mr. *A. E. Ryves*, for the respondent.

RICHARDS, C. J., and BANERJI, J. :—This appeal arises out of proceedings under the Land Acquisition Act. The learned District Judge has affirmed the award of the Collector on the sole ground that the appellant did not state "the nature of his interest in the land and the particulars of his claim to compensation for such interest" by way of objection under section 9, clause (2), of the Land Acquisition Act. He appears to have

\* First Appeal No. 369 of 1915, from a decree of H. Nelson Wright, District Judge of Bareilly, dated the 3rd of September, 1915.

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April, 16.