

presented that the court made its order that the applicant should produce a certified copy of the decree. This being so, it seems to us that the application was "in accordance with law" and saved limitation. We allow the appeal, set aside the order of the court below and remand the case to that court with directions to re-admit the application and to proceed to hear and determine the application according to law. As we think that the decree-holder ought to have had the necessary documents before the court and that the present appeal is due to his carelessness, we direct the parties to pay their own costs of this appeal.

Appeal allowed.

RAGHUNAN-
DAN LAL
v.
BADAN
SINGH.

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

NARSINGH DAS (OBJECTOR) v. DEBI PRASAD (DECREE-HOLDER)*

1918
January, 10.

*Execution of decree—Limitation—Decree giving mesne profits to be ascertained
in the execution department—Terminus a quo.*

The decree in a suit for redemption of a usufructuary mortgage provided that certain mesne profits were payable to the mortgagor, the mortgage having been more than satisfied by the profits of the property. The amount of mesne profits was to be ascertained in the execution department. *Held* that as regards execution of the decree in respect of such mesne profits time did not begin to run against the mortgagor until the profits had in fact been ascertained. *Muhammad Umarjan Khan v. Zinat Begam* (1) followed.

THE facts of this case were as follows :—

A suit for redemption was brought in which the plaintiffs, mortgagors, claimed mesne profits on the ground that the mortgage had been satisfied by the usufruct of the property and that a surplus was due to them. The court passed a decree in their favour and directed that the mesne profits should be determined in the execution department. This decree was made on the 22nd of November, 1904. In 1907, the mortgagors applied to have the mesne profits ascertained, and they were finally adjudicated upon in the year 1910. The decree was executed from time to time and various sums were realized. The present application for execution was made on the 18th of April, 1917. It was objected that the application was barred by limitation. The objection was

* First Appeal No. 278 of 1917, from a decree of G. O. Allen, Subordinate Judge of Jaunpur, dated the 7th of July, 1917.

(1) (1903) I. L. R., 25 All., 385.

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overruled, and the application for execution was allowed. The judgement-debtor appealed to the High Court.

Babu *Preo Nath Banerji*, for the appellant.

Munshi *Gokul Prasad*, for the respondent.

RICHARDS, C. J., and BANERJI, J. :—This appeal arises out of execution proceedings. The original suit was one for redemption, the plaintiffs alleging that they were entitled to possession of the property which had been mortgaged and mesne profits on the ground that the mortgage had been discharged by the usufruct, and a surplus was due to the mortgagor. This suit resulted in a decree for possession and a direction for an inquiry as to what amount of mesne profits the plaintiffs were entitled to. The matter had been litigated up to the High Court and its decree was dated the 2nd of November, 1904. In pursuance of the decree directing the inquiry as to mesne profits an application was made for that purpose in the year 1907, and the mesne profits were finally adjudicated upon in the year 1910. The decree was then put into execution and various sums were realized from time to time. The present application for execution was made on the 18th of April, 1917. The application was met with various objections. The objection insisted upon in this Court is that the decree which must be deemed as now executed is the decree of the High Court of 1904, and that accordingly its execution is barred either by the provisions of section 230 of the Code of Civil Procedure of 1882, or by section 48 of the present Code. These two sections appear to be almost identical, with one exception, namely, that section 230 of the Code of 1882, speaks only of a decree for "payment of money" whilst the present Code speaks of decrees generally, except as therein provided. The words of the present Code are "where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from the date of the decree sought to be executed." The argument put forward is that the date of the present decree was the 2nd of November, 1904. If this contention be correct the application was undoubtedly time-barred and could not be granted. The matter is not now of any very general importance because

in future all decrees for mesne profits in a suit for recovery of immovable property must be made by the court which grants the decree for possession of the property (the rules provide for the making of a " preliminary " and a " final " decree). The contention put forward on behalf of the respondent is that the court having directed an inquiry as to mesne profits there was no complete, or (to adopt an expression used by their Lordships of the Privy Council) there was no " operative " decree until the mesne profits were ascertained in the year 1910. This very point was considered by a Bench of this Court in the case of *Muhammad Umarjan Khan v. Zinat Begam* (1). The learned Judges in that case referred to the judgement of their Lordships of the Privy Council in *Radha Prasad Singh v. Lal Sahab Rai* (2) and also to a Full Bench decision of the Calcutta High Court. We think that we ought to follow this case, which is in accordance with the practice which has been adopted by the new Code of Civil Procedure and which, moreover, seems to be in accordance with justice. Applying the principle laid down in these cases to the present case, it must be deemed that the " date " of the decree, so far as it related to mesne profits, is the 15th of February, 1910, when the mesne profits were for the first time ascertained. Since that date there have been numerous applications for execution which have saved limitation and made the present application within time. On the general merits we have heard the parties and see no reason to differ from the view taken by the court below. We dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CIVIL.

Before Mr. Justice Muhammad Rafiq.

DEBI PRASAD (APPLICANT) v. J. A. H. LEWIS (OPPOSITE PARTY) *
Act No. III of 1907 (Provincial Insolvency Act), section 16 (2), clause (a)—Civil Procedure Code, 1908, section 60—Insolvency—Attachment of half the salary of the insolvent.

One of the creditors of a person who had been declared an insolvent by the Small Cause Court Judge of Cawnpore, but who had since obtained employment

* Civil Revision No. 10 of 1917.

(1) (1903) I. L. R., 25 All., 885. (2) (1890) I. L. R., 18 All., 58.

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 January, 18.