

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

1918  
January, 7.

GHULAM MUHI-UD-DIN KHAN AND ANOTHER (DECREE-HOLDERS). v.  
DAMBAR SINGH (OBJECTOR).\*

*Act No. IX of 1908 (Indian Limitation Act), schedule I, article 182—Explanation I—Execution of decree—Limitation—Execution of decree of first court and of decree of appellate court for costs carried out separately.*

In execution of a decree against S, D attached a decree held by S against himself and others for possession of certain property and costs. This decree had been the subject of an appeal by D and one other of the judgement-debtors which had resulted in a decree for costs against the two appellants only. The last application for execution of this decree was made in 1907. As to the lower court's decree D made various applications for execution and succeeded in realizing all that was due under it. S became insolvent, and the receiver sold to one M whatever rights S may have had under either decree; but on application for execution made by the purchaser, it was held that there was nothing more to realize under the original decree and the execution of the appellate decree was barred by limitation.

ONE Sri Kishan Das obtained a decree for possession and costs (Rs. 887-4) against Karan Singh, Dambar Singh, Ram Chandar Singh and others jointly, on the 6th of August, 1902. Two out of these defendants, viz., Karan Singh and Dambar Singh, appealed to the High Court and their appeal was dismissed with costs (Rs. 1,229-8-3) awarded to Sri Kishan Das. Dambar Singh had obtained a decree against Sri Kishan Das and he attached the decree of Sri Kishan Das mentioned above. As attaching creditor he applied to execute the decree of Sri Kishan Das and on two occasions realized sums of money aggregating a little over Rs. 1,000. He again applied on the 6th of September, 1910, to realize the balance by attachment of certain property belonging to Ram Chandar Singh, defendant, who objected that the sum already realized had satisfied the decree for costs of the first court and he was not liable for the costs of the High Court. His objection was allowed, it being held by the court that the decree for costs of the first court had been satisfied and that the decree which Dambar Singh was executing was the High Court's decree for costs under which Ram Chandar Singh was not liable. This decision was affirmed on appeal by the High Court in E. F. A. 49 of 1912 on the 7th of May, 1912. Sri Kishan Das was subsequently declared an insolvent, and the official assignee, Bombay,

\* First Appeal No. 281 of 1917, from a decree of Shams-ud-din Khan, First Additional Subordinate Judge of Aligarh, dated the 12th of May, 1917.

was appointed receiver. A question arose in the course of execution as to whether after, the insolvency of Sri Kishan Das, Dambar Singh, by virtue of his attachment, was entitled to execute the decree or whether by virtue of the insolvency the decree vested in the official assignee and it was ultimately decided by the High Court on the 10th of November, 1917, that the effect of the insolvency was to vest the decree in the assignee and that Dambar Singh could not execute the decree. This decision is reported in *Dambar Singh v. Munawar Ali Khan*(1). The official assignee transferred the decree to Chaudhri Ghulam Muhi-ud-din Khan who applied for substitution of his name to execute the decree under order XXI, rule 16. The court below dismissed the application as barred by limitation. Chaudhri Ghulam Muhi-ud-din Khan appealed.

Munshi *Panna Lal*, for the appellant :—

Although Dambar Singh was one of the judgement-debtors of Sri Kishan Das, he was competent to attach the decree in execution of his own decree against Sri Kishan. This had been held in respect of this very decree in an earlier execution; *Kalyan Singh v. Dambar Singh*(2). Consequently any applications for execution made by Dambar Singh would enure to the benefit of the present applicant. It is true that Dambar Singh did not take out execution against himself, but execution taken out against any judgment-debtor would save time against all the judgement-debtors, *vide* Limitation Act, article 182, explanation I. The present application against Dambar Singh was therefore within time under article 182, clause (5).

Babu *Piari Lal Banerji*, for the respondent :—

As the result of the court's decision in 1912, the decree for costs of the first court had been satisfied prior to the 6th of September, 1910, and the application which was made on that day was therefore one to execute the decree for costs of the High Court and any subsequent application that was made was also therefore one to execute the High Court's decree for costs. As far as this decree was concerned, it was not against all the defendants jointly, but only against two, Karan Singh and Dambar Singh. There had been no application to execute this decree either against

1918

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GHULAM  
MUHI  
UD-DIN KHAN  
v.  
DAMBAR  
SINGH.

(1) (1917) L. L. R. 40 All. 86.

(2) (1909) 6 A. L. J. 564.

1918

GHULAM  
MUHI-UD-  
DIN KHAN  
v.  
DAMBAR  
SINGH.

Karan Singh or Dambar Singh and any application made to execute this decree against persons other than these would not save time against Dambar Singh, as the persons against whom execution was sought were *not jointly liable* with Dambar Singh. An application for execution against one of several judgement-debtors only saves time against the others, if the former is jointly liable with the others, *vide* explanation I, article 182.

Munshi *Panna Lal*, was heard in reply.

RICHARDS, C.J., and BANERJI, J. :—The facts of this case are somewhat complicated, but they can be shortly stated. One Sri Kishan Das obtained a decree. The decree was against one Dambar Singh, Karan Singh and certain other persons. The decree awarded possession of certain property and costs against all the judgment-debtors jointly. Karan Singh and Dambar Singh alone appealed to the High Court, which dismissed the appeal with costs against Dambar Singh and Karan Singh. This happened on the 1st of December, 1904. Dambar Singh had a decree against Sri Kishan Das, and he attacked either the first court's decree or both the first court's decree and the decree made by the High Court (it is not quite clear which) in execution of his decree against Sri Kishan Das. From time to time Dambar Singh sought execution against all the judgement-debtors other than himself and Karan Singh. From time to time he realized money as the result of these applications for execution, and eventually it was held that he had realized the amount awarded by the first court's decree. No mention appears ever to have been made specifically of the decree of the High Court, and it would almost seem as if it was the first court's decree, and not the High Court's decree which was being executed by Dambar Singh. So far as the High Court's decree is concerned the last application for execution previous to the present one was in the year 1907. Sri Kishan Das eventually became insolvent, and the present applicants were purchasers at public auction of the assets of Sri Kishan Das, including the decree or decrees to which we have referred above. The present applicant is, therefore, entitled, (provided he is within time,) to execute the decrees which Sri Kishan Das obtained, and the present application was against Dambar Singh for the alleged balance still

due upon foot of the first court's decree and the High Court's decree. It seems to us quite clear that so far as the first court's decree is concerned the full amount was already realized by Dambar Singh before Sri Kishan Das became insolvent. It is argued that the applications which were made from time to time by Dambar Singh, the last of which was admittedly within three years of the present application, saved limitation and entitled the present owner of the decree to apply for execution. We do not think that this can be so in the present case, because the money which it is now sought to realize is really the money due on foot of the High Court's decree, and that decree was against Dambar Singh and Karan Singh only. No previous applications since the year 1907 were made either against Dambar Singh or Karan Singh. This being so, the order of the court below was correct and must be confirmed. We dismiss the appeal with costs.

*Appeal dismissed.*

*Before Sir Henry Richards, Knight, Chief Justice, and Justice*

*Sir Pramadā Charan Banerji.*

RAGHUNANDAN LAL AND OTHERS (DECREE-HOLDERS) v. BADAN SINGH  
AND ANOTHER (JUDGMENT-DEBTORS)\*.

*Act No IX of 1908, (Indian Limitation Act), schedule 1, article 182(5)—Execution of decree—Limitation—Application not accompanied by a copy of the decree—Civil Procedure Code (1908), order XXI, rule 11.*

An application for execution of a decree which complies with the requirements of clause (2) of rule 11, order XXI, of the Code of Civil Procedure, cannot be said to be an application which is not "in accordance with law" within the meaning of article 182(5) of the first schedule to the Indian Limitation Act, 1908, only because it is not accompanied by a copy of the decree, which may be required by the Court under clause (3) of the rule.

THE facts of this case were as follows :—

An application was made on the 1st of March, 1916, for execution of a decree for sale in a mortgage suit. The application was in writing, and in compliance with the provisions of rule 11(2) of order XXI of the Code of Civil Procedure. It was not, however, accompanied by an affidavit, a receipt of inspection of the registration office, and copies of the *khewat* and

\* First Appeal No. 307 of 1917, from a decree of Shamsuddin Khan, First Additional Subordinate Judge of Aligarh, dated the 27th of April, 1917.

1918

GHULAM  
MUHT-UD-  
DIN KHAN  
v.  
DAMBAR  
SINGH.

1918  
January, 7.