

of the fact that the mortgage security has been exhausted. I concur in the proposed order.

BY THE COURT:—The appeal is allowed, the decree of the Court below is set aside and the objection of the judgment-debtor dismissed with costs.

Appeal allowed.

Before Mr. Justice Piggott and Mr. Justice Walsh.

BABU RAM (JUDGMENT-DEBTOR) v. PIARI LAL AND OTHERS

(DECREE-HOLDERS).*

Act No. IX of 1908 (Indian Limitation Act), schedule I, article 182 (5)—Execution of decree—Limitation—Step in aid of execution—Application by decree-holder to be put into possession of property purchased by him in execution of his decree.

Held that an application by a decree-holder to be put in possession of property which he has purchased in execution of his decree is an application to take a step in aid of execution of the decree within the meaning of article 182 (5) of the first schedule to the Indian Limitation Act, 1908. Noli Lal v. Makund Singh, (1) and Bhagwati v. Banwari Lal (2) referred to.

THIS was an appeal arising out of an application for the execution of a decree. The decree was passed on the 3rd of December, 1912, and the present application was presented on the 15th of March, 1917. But meanwhile there had been partial execution of the decree. The decree-holder had applied for sale of the hypothecated property covered by the decree, and it had been purchased by him, with the leave of the court, on the 20th of January, 1914. After this, on the 26th of June, 1914, the decree-holder had applied to the executing court to put him into possession of the property so purchased and he claimed that this application gave him a fresh period of limitation within the meaning of article 182 (5) of the first schedule to the Indian Limitation Act, 1908. The execution court accepted this contention, and ordered execution to proceed. The judgment-debtor appealed to the High Court.

Munshi Girdhari Lal Agarwala, for the appellant.

Munshi Lakshmi Narayan, for the respondent.

PIGGOTT, J.:—The question for determination in this appeal is one of limitation. The facts are not in dispute. The decree

* First Appeal No. 168 of 1918, from a decree of Gopal Das Mukerji, Subordinate Judge of Budaun, dated the 6th of June, 1917.

(1), (1897) I. L. R., 19 All., 477.

(2) (1908) I. L. R., 31 All., 82.

1919

ANINA BIE
v.
RAM
SHANKAR
MISRA.

1919

February, 24.

1919

BABU RAM
v.
PIARI LAL.

Piggott, J.

under execution was one of the 3rd of December, 1912, and the application for execution out of which this appeal arises was presented on the 15th of March, 1917. It was, therefore, beyond limitation, unless the decree-holder could show that there had been in the interval, and within three years of this present application, another application made in accordance with law to the proper court to take some step in aid of the execution of the decree or order within the meaning of article 182, clause (5), of the first schedule to the Indian Limitation Act (Act No. IX of 1908). Now it is admitted that there had been in the interval a partial satisfaction of the decree by a sale of a portion of the property. At this sale the hypothecated property was sold and the decree-holder had purchased it with the leave of the court on the 20th of January, 1914. On the 26th of June, 1914, the decree-holder, on the strength of this auction-purchase, applied to the execution court under order XXI, rule 95, of the Code of Civil Procedure to give him possession of the property which he had purchased. According to a clear decision of a Bench of this Court in *Moti Lal v. Makund Singh* (1) this application does operate as a step in aid of execution of the decree and does save limitation for any subsequent application.

The contention for the judgment-debtor appellant is that the principles underlying the above decision were discussed by a Full Bench of this Court in *Bhagwati v. Banwari Lal* (2) and that the decision of the Full Bench in that case is inconsistent with the view taken in *Moti Lal v. Makund Singh* (1).

It is further pointed out that one of the learned Judges who delivered the judgment of the majority of the Full Bench stated in express terms that he was unable to agree with the view taken by the learned Judges who decided *Moti Lal v. Makund Singh* (1). It seems to us that the questions for decision in the two rulings were altogether different and that the opinion expressed by one of the learned Judges in the latter case cannot be treated as over-ruling the considered decision of a Bench of this Court on a question of limitation, which was certainly not before the Full Bench when they pronounced the later decision.

(1) (1897) I. L. R., 19 All. 477.

(2) (1908) I. L. R., 31 All., 82.

In our opinion, therefore, the learned Subordinate Judge has rightly followed the considered decision of this Court on the particular question before him for determination. We dismiss this appeal with costs.

WALSH, J.—I agree.

Appeal dismissed.

1919

BAHU RAM
v.
PIARI LAL.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice

Muhammad Rafig.

JUGAL KISHORE AND ANOHER (APPELLANTS) v. BANKIM CHANDRA
(RESPONDENT).*

1919
February, 25.

Insolvency—Position of mortgages of insolvent—Whether mortgages entitled to receive interest at contractual rate up to date of payment.

A mortgagee from a person adjudicated an insolvent under the Provincial Insolvency Act, 1907, is entitled, as a secured creditor to receive out of the proceeds of the sale of the mortgaged property his principal, interest and costs, and he is entitled to interest up to the date of payment.

THIS was an appeal from an order of the District Judge of Jhansi in the exercise of his insolvency jurisdiction. The facts of the case are thus stated in the order under appeal :—

“ In this case the insolvents made a fraudulent transfer of a house to the mortgagees Jugal Kishore and Hazari Lal. The house was under mortgage to the latter, and the transfer took the form of a sale, by which the mortgage was alleged to be satisfied. The result of this fraud in the first place was that the debt of these creditors was not shown in the petition and they never became parties to the adjudication proceedings, this transfer having been made before the filing of the petition. After adjudication the fraudulent transfer was set aside by the court at the instance of the receiver, and the order of this court was upheld by the High Court. The mortgagees thus reverted to their position as secured creditors. They have not realized, relinquished or valued their security, and do not wish to come on the schedule. The receiver has sold the house and wishes to pay these men off. They claim interest at the bond rate down to the date of actual payment. The receiver offers interest on the terms of section 32 and to the date of bankruptcy. But section

* First Appeal No. 184 of 1918, from an order of H. J. Bell, District Judge of Jhansi, dated the 31st May, 1918.