

*Before Mr. Justice Piggott and Mr. Justice Walsh.*

RATI RAM (DECREE-HOLDER) v. NIADAR ANOTHER (JUDGMENT-DEBTORS).<sup>\*</sup>  
*Act No. IX of 1908 (Indian Limitation Act), section 7—Execution of decree—  
 Limitation—Death of decree-holder, persons entitled to execute decree being  
 the decree-holder's two sons, one of age the other not—Application for substi-  
 tution and death of elder son.*

1919  
 February, 18.

A decree absolute for sale on a mortgage was obtained on the 19th of December, 1906. The decree-holder applied for execution on the 23rd of September, 1909, but during the pendency of these proceedings he died, leaving two sons—J, of full age, and R, a minor. On the 29th of September, 1910, an application for substitution was made by J and R, J purporting to act as next friend to his brother and asking the court to appoint him as such. Before the date fixed for hearing, however, J died, and the application was dismissed on the date fixed, no one appearing on behalf of the decree-holder. On the 16th of July, 1917, R, who had attained majority earlier in the same year, applied for execution, praying that his application might be regarded as a continuation of the original application of 1909.

*Held* that this application was time-barred. It could not be regarded as a continuation of the application of 1909, and inasmuch as J could, as head of the joint family consisting of himself and R, have given a valid discharge on behalf of R as well as himself, R could not claim the benefit of section 7 of the Indian Limitation Act, 1908.

THE facts of this case were as follows :—

One Munshi Lal obtained, on the 19th of December, 1906, a decree absolute for sale on a mortgage. He applied for execution on the 23rd of September, 1909. During the pendency of the execution proceedings he died, on the 18th of July, 1910, leaving as his legal representatives his two sons, Joti Prasad and Rati Ram, the latter of whom was a minor. On the 29th of September, 1910, they applied to be brought on the record in Munshi Lal's place; Joti Prasad purporting to act as next friend of Rati Ram and asking the court to appoint him as such. Notices were thereupon issued to the judgment-debtors. Joti Prasad, however, died before the date fixed, and no one appearing on behalf of the decree-holder on that date, the court ordered the application for execution to be struck off as having become infructuous. Rati Ram, who attained majority in the beginning of the year 1917, made an application, on the 16th of July, 1917, for execution of the decree, praying that his application might be

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<sup>\*</sup> Second Appeal No. 886 of 1918, from a decree of Shams-ud-din Khan, Subordinate Judge of Meerut, dated the 10th of April, 1918, reversing a decree of Lachmi Narain, Munsif of Meerut, dated the 2nd of February, 1918.

1919

RATI RAM  
v.  
NIADAR.

regarded as being in continuation of the original applications for execution of 1909. The judgment-debtors pleaded limitation. The court overruled this plea and relied on *Sri Ram v. Het Ram* (1). The lower appellate court held that as Joti Prasad was major and, apparently, manager of the joint family consisting of himself and his minor brother, Rati Ram, he could have given a discharge without the concurrence of Rati Ram; and consequently time began to run against them both from the 29th of September, 1910, and the present application was barred by limitation. Rati Ram appealed to the High Court.

Mr. *M. L. Agarwala*, for the appellant :—

The application for execution is not barred by limitation. The application made by Joti Prasad and Rati Ram to be substituted on the record for the original decree-holder was one to take a step in aid of execution and gave rise to a fresh period of limitation in their favour. On the date of that application Rati Ram was a minor, and so they were entitled to the benefit of section 6 of the Limitation Act, notwithstanding the fact that Joti Prasad, one of the decree-holders, was of age; *Jiwan Ram v. Ram Sarup Ram* (2), *Zamir Hasan v. Sundar* (3), *Govindram v. Tatia* (4), Section 7 of the Limitation Act does not stand in my way, inasmuch as it does not control section 6; the two sections do not overlap, and are independent of each other. The provisions of section 7 have no application to this case. The words "jointly entitled" mean something more than "interested in common," and the case of two or more sons succeeding a father who held a decree is not one connoted by the section. It is intended to provide for cases where the decree can only be executed by all the decree-holders jointly; for example, in a case like that of *Farzand v. Abdullah* (5). Joti Prasad acting as next friend of his minor brother, could not have given a discharge himself, without obtaining the leave of the court; Order XXXII, rule 6, of the Code of Civil Procedure. Section 7 does not apply under such circumstances; *Jagarnath Singh v. Mahabir Das* (6). The application by Joti Prasad did not purport to be made by

(1) (1907) I. L. R., 29 All., 279. (4) (1895) I. L. R., 20 Bom., 388.

(2) (1904) I. L. R., 27 All., 67. (5) (1888) I. L. R., 6 All., 69.

(3) (1899) I. L. R., 22 All., 199. (6) (1912) 15 Indian Cases, 664.

him in the capacity of a manager of a joint Hindu family. There is no definite finding of the lower appellate court that he was in fact such manager. That court presumed it from the circumstance that he was the elder brother. It would not necessarily follow that he was the *de facto* manager. I am strongly supported by the case of *Ganga Dayal v. Mani Ram* (1). The case of *Acchaibar Singh v. Ram Sarup Sahu* (2) proceeds on the assumption that the person receiving the money was in fact the manager of the joint family. It does not advance the point any farther than the case of *Ganga Dayal v. Mani Ram* (1), which said that it was a question of fact for determination in each case as to whether the major member really acted as manager of the family. The words "without the concurrence of such person" in section 7 of the Limitation Act must be given some meaning. Joti Prasad could not give a discharge without the concurrence of his brother. Order XXI, rule 15, of the Code of Civil Procedure provides that it is for the court to give the necessary directions for protecting the interest of the co-decree-holder, and it is the court which supplies the concurrence on behalf of the minor decree-holder. Payment to one decree-holder out of court would not *ipso facto* discharge a decree. And payment through the court could only be obtained by Joti Prasad with the leave or sanction of the court. The "ability to give a discharge," as contemplated by the section, is one which is independent of any leave or sanction of the court; as was held in the Bombay case cited already. The lower appellate court has relied on a Madras case, namely, the case of *Doraiswami Sastrial v. Venkatarama Iyer* (3). But the view taken there is the logical result of that consistently taken by the Madras High Court, namely, that section 6 of the Limitation Act applies only where *all* and not some of the persons jointly entitled are under a legal disability; *Ahinsa Bibi v. Abdul Kader Saheb* (4), *Periasami v. Krishna Ayyan* (5). As has been shown above, the other High Courts have not taken that view. Secondly, the application to bring on the record the legal representatives of the deceased Munshi Lal

1919

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 RATT RAM  
 v  
 NIADAB.

(1) (1908) I. L. R., 31 All., 156. (3) (1911) 12 Indian Cases, 503.

(2) (1913) I. L. R., 35 All., 380. (4) (1901) I. L. R., 25 Mad., 26.

(5) (1902) I. L. R., 25 Mad., 431.

1919

RATI RAM  
v.  
NIADAB.

was not actually dismissed and should not have been dismissed. The court should have proceeded, on the death of Joti Prasad, under order XXII, rule 2, stayed the proceedings and waited for a further application to be made. The present application should be regarded as one in continuation of that application, which has not been disposed of by a proper order. In that view the present application is not barred by time. On the death of Joti Prasad, a fresh period accrued in favour of the minor, Rati Ram, to carry on the previous application.

Mr. *Shamnath Mushran*, for the respondents :—

There is no basis for the contention that the present application is one to renew the former application. It is a fresh application, and cannot be deemed to be in continuation of the former one. That one was struck off, and rightly struck off, as it had become quite infructuous on Joti Prasad's death. The court could not possibly have done anything else or passed any other order. Order XXII, rule 2, had no application to the case, because on the death of Joti Prasad there was no other decree-holder who was already on the record, or properly before the court. Unless there are any co-plaintiffs or co-decree-holders already on the record, the court cannot proceed under order XXII, rule 2. Rati Ram had neither been brought on the record nor had any next friend been appointed for him. The present application is not one asking the court to do what was asked for in the former application and what, to a large extent, has now become impossible of performance.

[He was not heard on the the point relating to sections 6 and 7 of the Limitation Act.]

Mr. *M. L. Agarwala*, in reply, cited further the case of *Moti Ram v. Hannu Prasad*, (1).

PIGGOTT, J. :—This second appeal by a decree-holder in an execution case arises out of the following state of facts. One Munshi Lal held a decree absolute for sale on a mortgage passed on the 19th of December, 1906. He took out execution of the same on the 23rd of September, 1909, but died while the execution proceedings were pending. On the 29th of September, 1910, his sons Joti Prasad and Rati Ram,

applied to be brought on the record as his legal representatives. The former was of full age and the latter a minor; the application was in the names of both, and Joti Prasad also asked to be allowed to act as the next friend of his minor brother. Notices were issued to the judgment-debtors to appear on the 10th of December, 1910, and show cause why this application should not be granted. In the mean time Joti Prasad died; and on the 24th of November, 1910, the pleader whom he had engaged informed the court of this fact and stated that he had no instructions to proceed further with the application. The court took note of this statement, but directed the matter to come up for orders on the 10th of December, 1910, the date fixed. On that date no one appeared on behalf of the decree-holder, and the court ordered the application for execution originally made by Munshi Lal to be struck off the file of pending cases as an application which had proved infructuous.

Rati Ram, having in the mean time attained majority, presented to the court on the 16th of July, 1917, the application out of which this appeal arises. It is drawn up in the prescribed form for applications for execution of decrees, and the relief sought is set forth in the following words:—

“In continuation of the application for execution No. 889 of 1909, it is prayed that it may be perused and formal orders for execution passed.”

The lower appellate court has dismissed the application as time-barred, and we have to decide if this order is right.

It is contended for the appellant that the present application should be treated as one asking the court to take up again the application of the 29th of July, 1910, as one in respect of which no proper orders have yet been passed, and to dispose of the same according to law. I should be glad to help the appellant if I could do so without contravening the law which all courts are bound to administer; but I cannot see my way to dealing with the matter on this footing. The application presented by Joti Prasad asked the court to do something which it could no longer do when Joti Prasad was dead; pending some further application on behalf of the minor Rati Ram no fresh steps in execution could be taken. Moreover, the order of the 10th of December, 1910, by which Munshi Lal's execution application of

1919

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RATI RAM  
v.  
NIADAR.

1919

RATI RAM  
v.  
NIADAR.

the 23rd of September, 1909, was dismissed as infructuous, disposed of the whole matter for the time being. If Joti Prasad and Rati Ram had both been on the record as decree-holders at the time of the former's death, some case might have been made out for the appellant by invoking the provisions of order XXII, rule 2, of the Code of Civil Procedure; but as the case actually stood the court had to wait for a fresh application to bring Rati Ram alone on to the record as legal representative of the deceased decree-holder, Munshi Lal. The case cannot be brought under the provisions of order XXII, rule 3, because nothing in that rule applies to proceedings in execution of a decree: vide order XXII, rule 12.

The main question dealt with by the courts below is whether Rati Ram's application of the 16th of July, 1917, is or is not barred by limitation under the provisions of article 182 of the first schedule to the Indian Limitation Act, No. IX of 1908. It was made more than three years after the application of the 29th of September, 1910, by which Joti Prasad asked, on behalf of himself and of his minor brother, that they might be permitted to continue the execution proceedings as the legal representatives of their deceased father. On the other hand, it was made within three years of Rati Ram's attaining majority. The decision, therefore, depends on whether time had begun to run as against both Joti Prasad and Rati Ram; and this again on the question whether Joti Prasad could have given valid discharge. Under section 8 of the former Limitation Act, No. XV of 1877, it was doubted whether the provisions of that section applied at all to joint decree-holders, and there was room for the view that the "discharge" of a judgment-debtor's liability was always given by the order of the court, and never by the mere act of any decree-holder. In face of some conflict of authority on this point the Legislature made it clear that the provisions of section 7 of the present Limitation Act, No. IX of 1908, do apply to joint decree-holders, wherever one of them can act in the matter on his own authority without the concurrence of the other. In the present case the lower appellate court was quite justified in presuming, on the state of facts disclosed by this record, that Joti Prasad was the manager of a Hindu joint family consisting of himself and

his brother. It does not appear that there were any other members of the family ; so that Joti Prasad was in fact the sole adult male member. He could have sued as manager of the joint family for the recovery of the mortgage-debt, if his father had not already obtained a decree for the same ; *a fortiori* he could have taken out execution of the decree and could have given a valid discharge for the same.

I do not think any purpose would be served by my discussing the various cases to which we were referred in the course of argument. All cases anterior in date to the passing of Act No. IX of 1908 require to be re-considered in the light of the words then inserted in section 7 of the said Act. The Madras case on which the lower appellate court has relied is directly in point and supports the decision arrived at. I do not think there is any case of this Court to the contrary ; the learned Munsif relied on a case the facts of which were materially different, in that the period of limitation for a fresh application for execution began to run against decree-holders all of whom were minors. This Court has never held, and I think would be most reluctant to hold, that in all cases in which a fresh period of limitation opens as against a number of decree-holders, members of one and the same family, one of whom happens to be a minor, it is open to the remaining decree-holders to remain quiescent for a period which might well extend to eighteen or twenty years, and then to put forward the said minor, after he had attained majority, to execute the whole decree for their benefit as well as his own. I do not see how we could hold the present application to be within time without, in effect, committing ourselves to some such proposition as the above. The ingenious argument addressed to us on behalf of the appellant seemed to me to be based, in the last resort, on the contention that the provisions of section 6 and section 7 of the Indian Limitation Act (No. IX of 1908) must be read so as to be mutually exclusive. I do not think they are mutually exclusive ; the latter section supplements the former.

I have carefully considered the question whether there was any application in this matter of which it could be said that the

1918

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RATI RAM  
v.  
NIADAR.

1919

RATI RAM  
v.  
NIADAR.

right to make the same accrued to Rati Ram on the 10th of December, 1910, or on some other date on which he, the minor, was the only person entitled to make such application. It must be noted that the execution court's order of the 10th of December, 1910, was an *ex parte* order against the decree-holder. It struck me that Rati Ram might conceivably have presented an application to the execution court, asking for that *ex parte* order to be set aside on the ground that he could show good cause for the non-appearance of any person on behalf of the decree-holder on the date above mentioned. The point was not argued out before us, and I do not express any opinion as to whether such an application might or might not have succeeded. It is sufficient to point out that the limitation period for such an application would be thirty days, and that in the present case the said thirty days would begin to run from the date on which Rati Ram attained majority. The precise date of his attaining majority is not given in this record, but it is stated to have occurred in the early part of the year 1917. The present application made on the 16th of July, 1917, cannot have been within thirty days of Rati Ram's attaining majority. It is impossible, therefore, for us to think of treating this application as one to have the *ex parte* order of the 10th of December, 1910, set aside. I would therefore dismiss this appeal with costs.

WALSH, J.:—I agree. It is not really necessary in this appeal to consider all the authorities which have been discussed. No doubt trouble has arisen in the construction of these two sections, sections 6 and 7, of the Limitation Act by reason of the use of the language in section 7, "where a discharge can be given." It is no doubt true that when the matter is in the execution court it is literally true, speaking of it as a matter of procedure, to say that a discharge cannot be given, because payment, for example, has to be made in and through the court or certified by the court, so that the discharge becomes an order of the court itself. But I take the very clear view, and I think it removes all the difficulties in this case, that sections 6 and 7 are dealing, not with procedure, but with the legal status of individuals, and the expression "where a discharge can be given" is merely intended in section 7 to be a definition of a person who



in the ordinary legal language is described as being "able to give a discharge." That is a definition of his legal capacity in relation to the other persons jointly interested, and not a description of his physical powers under the procedure of the execution court.

BY THE COURT.—The appeal is dismissed with costs.

*Appeal dismissed.*

*Before Mr. Justice Piggott and Mr. Justice Walsh.*

MUHAMMAD KASIM AND OTHERS (JUDGMENT-DEBTORS) v.

RUKIA BEGAM, (DECREE-HOLDER)\*.

*Civil Procedure Code (1908), section 47—Execution of decree—Compromise—Allegation by decree-holder that a compromise relating to the execution of a decree has been obtained by fraud—Question to be determined by the court executing the decree.*

As between the decree-holder and the judgment-debtor the question of an alleged fraudulent adjustment of the decree must be gone into and decided by the execution court. *Adhar Singh v. SheoPrasad* (1) followed.

THE facts of this case were as follows :—

One Musammat Rukia Begam obtained a decree for Rs. 27,000, in respect of her dower, against the other heirs of her husband. In the course of execution proceedings a deed of compromise signed by the parties was put in, reciting among other things that she had received Rs. 14,000 out of the total amount of the decree out of court, and making certain provisions for the satisfaction of the balance of Rs. 13,000. Some time later the judgment-debtors deposited some money in court and a certain sale deed executed by them in favour of Musammat Rukia Begam, and they made an application under order XXI, rule 2, of the Code of Civil Procedure stating that the provisions of the compromise had been carried out by means of the said payment and the execution of the said sale-deed, and asking the court for an order certifying that the decree was fully satisfied. Musammat Rukia Begam filed objections stating that the compromise had been obtained from her by fraud; that she had never been paid the Rs. 14,000, although she had, by means of misrepresentations, been persuaded to state that she had received it; and that she

\*First Appeal No. 345 of 1917 from a decree of Man Mohan Sanyal, Subordinate Judge of Meerut, dated the 13th of August, 1917.

(1) (1898) I. L. R., 24 All., 209.

1919

RATI RAM  
v.  
NIADAR.

1919  
February, 18.