

1920

MUSABDI
LAL
v.
BOMBAY,
BARODA AND
CENTRAL
INDIA
RAILWAY
COMPANY.

suit. His claim, if brought, would have been time-barred after February, 1914. The letter of the 17th of March, 1916, was written long after the claim had become time-barred. That letter, therefore, could not save the operation of limitation. It is lastly contended that the letter last mentioned amounted to a promise to pay and therefore the plaintiff is entitled to recover on the basis of that promise. In my opinion the letter could not be treated as a letter making a definite promise to pay a certain sum of money to the plaintiff. It was a letter offering to settle the claim at a certain amount. That offer was not accepted. The claim is not based upon any promise to pay and cannot be regarded as such. Section 25 of the Contract Act, to which reference was made, does not seem to me to have any bearing upon the present question. I hold that the court below was right in its view that the claim is time-barred. I accordingly dismiss the application with costs.

Application dismissed.

Before Justice Sir Pramada Charan Banerji.

KALLU KHAN (PETITIONER) v. ABDULLAH KHAN, AND ANOTHER
(OPPOSITE PARTY)*

Execution of decree—Attachment—Failure of custodian appointed by court to restore property to judgment-debtor when so ordered—Remedy of judgment-debtor.

Where a person placed in charge of property of a judgment-debtor by order of the court fails to restore the same to the judgment-debtor when directed to do so, the judgment-debtor's remedy is not to invoke by application executive or disciplinary action on the part of the court, but to sue the receiver for the restoration of the property or damages.

THIS was an application in revision against an order passed by a Munsif in the course of proceedings in execution of a decree.

The facts of the case appear from the order of the Court.

Mr. *Lakshmi Narain*, for the applicant.

The opposite parties were not represented.

BANERJI, J. :—The order complained of in this case was passed wholly without jurisdiction. What happened was this. A decree was obtained against Abdullah Khan by Bashir Khan on the 25th of February, 1919. He applied for execution of the decree on the 13th of March, 1919. The judgment-debtor

* Civil Revision No. 100 of 1919.

paid a portion of the decretal amount and obtained time to pay up the balance and the case was struck off in April, 1919. In execution of the decree some crops were attached and were placed in charge of the applicant, Kallu Khan. On the 27th of April, 1919, the judgment-debtor, Abdullah Khan, presented an application to the court in which he stated that, although he had paid a part of the decretal amount and the court had ordered the attached crops to be released, those crops had not been delivered back to him. An explanation was called for from the amin and on receipt of it, the court instituted certain proceedings and examined witnesses and in the end made an order on the 2nd of June, 1919, directing the applicant to hand over certain crops to the judgment-debtor or pay him Rs. 106, their price. There is no authority to justify the action of the Court. If Kallu Khan misappropriated the crops, the remedy of the judgment-debtor was to sue him for recovery of the crops or their value, or to bring a suit for damages against him, but the Court in proceedings like those set forth above, had no power to make a decree as it purports to have done against Kallu Khan, the man to whom the crops were entrusted. I accordingly grant the application and set aside the order of the court below. I make no order as to costs.

Application granted.

FULL BENCH.

Before Sir Grimwood Mears, Knight, Chief Justice, Justice Sir Pramada

Charan Banerji and Mr. Justice Walsh.

SRI THAKURJI (PLAINTIFF) v. SUKHDEO SINGH AND OTHERS

(DEFENDANTS).*

1920
March, 11.

Hindu law—Religious endowment—Tests for deciding whether an endowment is real and substantial or merely illusory—Attempt to establish a perpetuity in favour of the descendants of the settlor.

By a deed of endowment, so-called, executed not long prior to his death, a Hindu professed to dedicate practically the whole of his property in favour of an idol. It was provided in this deed that the settlor should apply for mutation of names in favour of the idol, and that he should use the income of the property for the expenses of *puja* and *rajbhog* and for the repair of the temple,

* First Appeal No. 167 of 1917, from a decree of Udit Narain Singh, Subordinate Judge of Benares, dated the 1st of March, 1917.