

## REVISIONAL CIVIL.

Before Mr. Justice Dalal.

MOHAN SINGH AND OTHERS (DECREE-HOLDERS) v. JAGAT SINGH AND ANOTHER (OBJECTORS).\*

1928  
January,  
18.

Act No. IX of 1908 (*Indian Limitation Act*), schedule 1, article 182—*Execution of decree—Limitation—Application for substitution of names—“Step in aid of execution”*—*Civil Procedure Code*, order XXI, rule 16; order XXII, rule 1.

An application for substitution of names is a step in aid of execution. *Pitam Singh v. Tota Singh* (1), followed. *Annamalai Mudaliar v. Ramier* (2), referred to.

Rule 16 of order XXI applies only to substitution along with execution and there is no bar under any of the rules in schedule I of the Code of Civil Procedure to substitution of names by an executing court when an execution proceeding is already pending.

THE facts of this case are fully set forth in the judgement of the Court.

Pandit K. N. Laghate and Munshi Girdhari Lal Agarwala, for the applicants.

Mr. G. K. Shinde, for the opposite parties.

DALAL, J. :—The question to be decided here is whether limitation of an application for execution filed in the Court of Small Causes on the 13th of February, 1925, was saved or not by action taken by the decree-holder in earlier years. That court passed the money decree on the 2nd of June, 1920. The first execution application was presented by the original decree-holder on the 16th of November, 1921, and the application was transferred to the court of the regular Munsif of Fatehabad on the 17th of November, 1921. During the pendency of proceedings in the Fatehabad court the decree-holder died and his successors in interest, Durga Prasad and others, applied to that court on the

\*Civil Revision No. 204 of 1927.

(1) (1907) I.L.R., 29 All., 301.

(2) (1908) I.L.R., 31 Mad., 234.

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18th of February, 1922, for substitution of their names in place of that of the original decree-holder and for continuation of execution proceedings. They deposited process-fee for service of notices on the judgement-debtors on the 21st of March, 1922, and notices were issued. On the 16th of April, 1922, the Fatehabad court directed substitution of names and amended the application. The proceedings in execution were stayed because a connected original suit was pending, and finally on the 19th of February, 1924, the Fatehabad court rejected the application. The next application was filed in the Court of Small Causes on the 13th of February, 1925, and was dismissed in default on the 6th of April, 1925. Subsequent to this date the decree was sold to persons who are applicants in revision here and they applied for substitution and execution under order XXI, rule 16, on the 15th of December, 1926. This application was dismissed. The court conceded that it was within time from the next preceding application of the 13th of February, 1925, but it was of opinion that the application of Durga Prasad and others of the 18th of February, 1922, did not save limitation as it was not made in the proper form of 18 columns to the proper Court of Small Causes, but was wrongly made merely for substitution and to the court at Fatehabad, where the application was transferred for execution. When that application was removed, the decree-holder would have to refer back to the 16th of November, 1921, when the first application for execution was made by the original decree-holder, and that was obviously of no benefit to the applicants, because it was filed more than 3 years prior to the 13th of February, 1925.

The applicants have come here on the ground that the Court of Small Causes refused to exercise jurisdiction which was vested in it of executing the decree. I think the point was correctly argued by Mr. *Laghate*

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that the court overlooked the consideration of the question whether the application of the 18th of February, 1922, was or was not some step in aid of execution of the decree. The subordinate court refused the benefit of the application of the 18th of February, 1922, on the ground that the application was not made in accordance with law to the proper court of execution, but did not consider whether it was a step in aid of execution or not. The two matters are distinct under paragraph 5 of article 182 and not concurrent. Mr. *Shinde* on behalf of the respondents relied on the defects in the application not being one for execution and to the proper court, as directed by order XXI, rule 16, and urged that those defects prevented the application from being one that could be treated as a step in aid of execution. It may be observed that the limitations are of an application being in accordance with law and to the proper court where a step in aid of execution is put forward to save limitation. First of all I am not prepared to hold that the Fatehabad court had no jurisdiction to substitute the names of the legal representatives of the decree-holder. Rule 1 of order XXII does apply to execution proceedings; only rules 3, 4 and 8 of that order do not apply. There can, therefore, be no abatement of the application for execution. Rule 16 applies only to substitution along with execution and there does not appear to me to be any bar under any of the rules in schedule I of the Code of Civil Procedure to substitution of names by an executing court when an execution proceeding is already pending.

Apart from this, the application of the 18th of February, 1922, was a step in aid of execution as warning the judgement-debtors that the decree-holder had died and that Durga Prasad and others desired subsequently to take proceedings in execution. This was giving the judgement-debtors an opportunity to object

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if they liked, and they did not object. There can be no doubt that an application for substitution of names is a step in aid of execution. A Bench of this Court has held accordingly in *Pitam Singh v. Tota Singh* (1). A judgement of the Madras High Court in *Annamalai Mudaliar v. Ramier* (2) is of considerable interest when applied to the facts of the present case. There the application was made to the court which passed the decree, but the objection taken was that it was merely an application for substitution and not one for execution as required under section 232 of the previous Code of Civil Procedure, corresponding to order XXI, rule 16. The learned Judges repelled this objection in the following words :—

“We are unable to agree with this conclusion. The petition, as appears from its terms, was intended as a step in aid of execution, as it sought the recognition by the court of the petitioner's right to execute, which recognition it was open to the court to grant or withhold. The question then arises, was it an application in accordance with law? It is no doubt true, as pointed out by Sir Bhashyam Aiyangar in *Ramchandra Aiyar v. Subramania Chettiar*, 14 M. L. J., 393, that section 232, Civil Procedure Code, does not provide for an application in this form, but contemplates that the transferee should apply for execution of the decree without any preliminary of the kind, merely giving notice of the application to the transferor and the judgement-debtor. Consequently when, instead of applying for execution, the appellant put in his application for recognition as transferee, the court might have returned the petition to him for amendment as not in accordance with the section. Instead of doing this, the court made the order prayed for and the defendant did not appeal against it as he might have done. Under these circumstances the application must be taken to have been in accordance with law”.

In the present case also it was open to the judgement-debtors to object to the jurisdiction of the Fatchabad court or to the form of the application. They did

(1) (1907) I.L.R., 29 All., 301.

(2) (1908) I.L.R., 31 Mad., 234.

neither. Whether Durga Prasad and others conceived their remedy rightly or wrongly, it seems clear that the application of the 18th of February, 1922, was a step in aid of execution, that is, they filed the application in the desire to further their object of executing the decree.

I set aside the order of the lower court, dated the 14th of June, 1927, and direct that court to proceed with the application for execution, dated the 15th of December, 1926. The applicant shall receive the costs of this Court from the opposite party.

*Order set aside.*

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### FULL BENCH.

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*Before Justice Sir Cecil Walsh, Mr. Justice Lindsay and Mr. Justice Banerji.*

1927  
November,  
11.

*Before Mr. Justice Boys and Mr. Justice Iqbal Ahmad.*

1928  
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EMPEROR v. SHERA AND OTHERS.\*

*Criminal Procedure Code, section 307—Jury—Power of High Court to revise the verdict of a jury on the merits.*

Where a jury has given its verdict on the facts of the case, it is open to the High Court to revise that verdict on a reference by the trial Judge made under section 307 of the Code of Criminal Procedure, where it is not alleged that there has been any misdirection by the Judge or any misunderstanding by the jury of the law as laid down by the Judge. *Wafadar Khan v. Queen-Empress* (1), *Emperor v. Lyall* (2), *Reg. v. Khanderao Bajirav* (3), *Emperor v. Chellan* (4), *Emperor v. Bhailotan Singh* (5), and *Emperor v. Panna Lal* (6), referred to.

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\*Criminal Reference No. 481 of 1927.

(1) (1894) I.L.R., 21 Calc., 955.

(2) (1901) I.L.R., 29 Calc., 128.

(3) (1875) I.L.R., 1 Bom., 10.

(4) (1905) I.L.R., 29 Mad., 91.

(5) (1921) 6 Pat. L.J., 264.

(6) (1924) I.L.R., 46 All., 255.