application has no merits. I agree, therefore, in the order proposed by my brother. 1925

KEHRI SINGH v. THIRPAL.

ORDER OF THE COURT.—The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Lindsay and Mr. Justice Sulaiman.

1925 *July*, 1.

SULTAN BEGAM (DECREE-HOLDER) *v.* SARVI BEGAM (JUDGEMENT-DEBTOR).*

Civil Procedure Code, section 48; order XXI, rule 11—Execution of decree—Limitation—No vested right in rules of procedure or limitation.

A decree for sale was obtained against two sets of properties situated in Bulandshahr and Meerut in 1907. Before the final decree was passed on the 10th of August, 1908, part of the property situated in the Meerut district was auctioned and purchased by one *SB* on the 25th of March, 1908. An order absolute under the old Code was passed on the 10th of August, 1908. *SB*, however, was not impleaded till then. After executing his decree in respect of the properties situated in Bulandshahr, the decree-holder obtained on application, on the 22nd of December, 1922, a certificate of transfer of the decree to Meerut. When the case went to the Meerut court, the present application for execution was made on the 10th of January, 1923. Objection was raised by *SB* that the present application, not having been made within three years of the last application for execution or any step in aid of execution as against her, was barred, and further that the decree being more than 12 years old, the application was not maintainable.

Held, that the present application was barred under the provisions of section 48 of the Code of Civil Procedure. *Kaunsilla* v. *Ishri Singh* (1), distinguished. The law of procedure and limitation applicable to an application for execution would be the law actually in force at the time when the

* First Appeal No. 421 of 1924, from a decree of Raj Rajeshwar Sahai, Subordinate Judge of Meerut, dated the 10th of May, 1924.

(1) (1910) I.L.R., 32 All., 499.

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application is made. The present application was undoubtedly under order XXI, rule 11, of the new Code and there was no ground for holding that section 48, which is a part of that very Code, is inapplicable to this application. *Soni Ram* v. *Kanhaiya Lal* (1), *Bisseswar Sonamut* v. *Jasoda Lal Choudhry* (2), *Gopal Das v. Tribhowan* (3), and *Mahant Krishna Dayal* v. *Musammat Sakina Bibi* (4), followed.

The present application for grant of a certificate could not be deemed to be a continuation of the proceedings in execution taken in respect of the property in Bulandshahr. *Sundar Singh* v. *Daru Shankar* (5) and *Khetpal* v. *Tikam Singh* (6), referred to.

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

Munshi *Panna Lal*, for the appellant.

Dr. *Kailas Nath Katju*, for the respondent.

LINDSAY and SULAIMAN, JJ. :—This is a decree-holder's appeal arising out of an execution matter. The respondents took the objection *inter alia* that the application for execution was barred by the three years' rule under article 182 of the Limitation Act as well as by the 12 years' rule under section 48 of the Code of Civil Procedure.

The objection is based on the following circumstances :—A decree for sale was obtained against two sets of properties situated in Bulandshahr and Meerut in the year 1907. Before the final decree was passed, part of the property situated in the Meerut district was sold at an auction and purchased by Sarvi Begam on the 25th of March, 1908. An order absolute under the old Code was passed on the 10th of August, 1908. Sarvi Begam, the purchaser, was however not impleaded till then. Subsequently, Sarvi Begam made a gift of a portion of her interest in favour of Taimur Ali

(1) (1913) I.L.R., 35 All., 227.
(2) (1913) I.L.R., 40 Calc., 704.
(3) (1920) I.L.R., 45 Bom., 365.
(4) (1916) 1 Pat. L.J., 214.
(5) (1897) I.L.R., 20 All., 78.
(6) (1912) I.L.R., 34 All., 396.

Shah some time in the year 1305 Fasli, corresponding to 1918.

The decree-holder first proceeded to execute his decree in respect of the properties situated in Bulandshahr. These execution proceedings went on for several years and part of the decretal amount was realized by sale of the properties situated in that district. Ultimately on the 13th of October, 1922, the decree-holder put in an application, which, however, is not on the record of this case, for execution, or rather for grant of a certificate of transfer of the decree to the district of Meerut. On the 22nd of December, 1922, a certificate was granted and the decree was ordered to be transferred to the court of the Subordinate Judge at Meerut. When the case went to the Meerut court, the present application for execution was made on the 10th of January, 1923. Objection was raised by Sarvi Begam that the present application, not having been made within three years of the last application for execution or any step in aid of execution as against her, was barred, and further that the decree being more than 12 years old, the application was not maintainable.

The learned Subordinate Judge has disallowed the objection so far as the bar of the 12 years' rule is concerned, but has entertained the other objection and dismissed the application.

The decree-holder comes in appeal and on her behalf it is contended that there can be no bar of three years' rule inasmuch as execution proceedings were going on against persons interested in the other part of the mortgaged properties which were jointly liable for the mortgage debt. In the view which we have taken of the other point it is not necessary to go into this matter.

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It is clear to us that the present application is barred under the provisions of section 48 of the Code of Civil Procedure. The learned Subordinate Judge, who disallowed the objection, relied on the case of *Kaunsilla* v. *Ishri Singh* (1). That case was certainly in favour of the view which he took, but for reasons which we proceed to mention, that authority is now no longer binding on us.

It cannot be doubted that, although the decree was passed at a time when the old Code of Civil Procedure was in force, the application for execution of it is made at a time when the new Code is in force. The law of procedure and limitation applicable to an application for execution would be the law actually in force at the time when the application is made. This application is undoubtedly under order XXI, rule 11, of the new Code and there seems to be no good ground for holding that section 48, which is a part of that very Code, is inapplicable to this application.

The argument on behalf of the appellant is that as the decree was passed under the old Code the decree-holder acquired a vested right to apply for execution and that inasmuch as under the old Code there was no such bar of 12 years, his right is in no way affected by the coming into force of the new Code. This contention cannot be accepted. The new Code did not in any way affect his right to execute the decree which he had obtained. It has in no way curtailed his right; it has merely placed a bar of limitation as to the period of time during which he can apply. There was no vested right in the decree-holder to wait for an indefinite period of time in order to apply for execution. The learned Judges who decided the case above mentioned were led away by the supposition that the decree-holder acquires a vested right not only to apply

(1) (1910) I.L.R., 32 All., 499.

for execution but also in the period within which he can apply. Their attention was not drawn to an earlier case of this Court reported in the same volume at page 33, where a Bench of this Court pointed out at page 43 that the law of limitation applicable to a suit or proceeding is the law in force at the date of the institution of the suit or proceeding unless there is a distinct provision to the contrary. This view was affirmed by their Lordships of the Privy Council in a case between the same parties reported in *Soni Ram* v. *Kanhaiya Lal* (1). Their Lordships accepted the view expressed by this Court and held that the law of limitation applicable to a suit or proceeding is the law in force at the date of the institution of the suit or proceeding unless there is a distinct provision to the contrary. In view of this authoritative pronouncement we are no longer bound by the views expressed in the case of *Kaunsilla* v. *Ishri Singh* (2). We may further point out that this view has been accepted by the High Courts at Calcutta, Bombay and Patna *vide* :—*Bisseswar Sonamut* v. *Jasoda Lal Chowdhry* (3), *Gopal Das* v. *Tribhowan* (4) and *Mahant Krishna Dayal* v. *Musammat Sakina Bibi* (5).

The next argument advanced on behalf of the appellant is that the present application is not a fresh application for execution at all but that it is really a continuation of the execution proceedings which had been started by the application of the 13th of October, 1922, and inasmuch as that application was within 12 years, the present application being a mere continuation of it is not barred. This argument also has no force. The previous application for grant of a certificate was not an application in the nature of an execution and therefore the present application for

(1) (1913) I.L.R., 35 All., 227. (2) (1910) I.L.R., 32 All., 499.
(3) (1913) I.L.R., 40 Calc., 704. (4) (1920) I.L.R., 45 Bom., 365.
(5) (1916) 1 Pat. L.J., 214.

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execution cannot be deemed to be a continuation of it. The execution proceedings pending in the Bulandshahr district related to property situated in that district and could not relate to the property in the Meerut district. The prayer in the present application is for sale of other properties situated in Meerut. That such an application for execution is not a continuation of the original application for grant of certificate of transfer is well settled by the authorities of this Court. We may refer in this connection to the cases of *Sundar Singh* v. *Doru Shankar* (1) and *Khetpal* v. *Tikam Singh* (2).

We accordingly affirm the decree of the court below and dismiss this appeal with costs.

Appeal dismissed.

1925
July, 6.

Before Mr. Justice Sulaiman and Mr. Justice Daniels.

KISHAN DEI (DEFENDANT) *v.* SHEO PALTAN (PLAINTIFF).*

Hindu law—Marriage—"Karao" marriage—Ahirs—Custom—Stridhan.

Amongst the Ahir caste marriage in the *karao* form is well-recognized and legitimate.

Where, therefore, two persons of that caste who had been married in the *karao* form died leaving no issue, it was *held* that the woman's *stridhan* would descend to the husband's relations and not to those of the wife. *Jagannath Prasad Gupta* v. *Runjit Singh* (3), *Authikesavulu Chetty* v. *Ramanujam Chetty* (4), *Gabrielnathaswami* v. *Valliammai Ammal* (5), *Bhaoni* v. *Maharaj Singh* (6), *Moosa Haji Joonas* v. *Haji Abdul Rahim* (7), and *Hira* v. *Hansji Pema* (8), referred to.

THE facts of this case sufficiently appear from the judgement.

* First Appeal No. 172 of 1924, from an order of G. O. Allen, District Judge of Saharanpur, dated the 18th of June, 1924.

(1) (1897) I.L.R., 20 All., 78.
(2) (1912) I.L.R., 34 All., 396.
(3) (1897) I.L.R., 25 Calc., 354.
(4) (1909) I.L.R., 32 Mad., 512.
(5) (1918) 53 Indian Cases, 423.
(6) (1881) I.L.R., 3 All., 738.
(7) (1925) I.L.R., 30 Bom., 197.
(8) (1912) I.L.R., 37 Bom., 295.