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FAJER  
CHAND  
v.  
SANT LAL.

Musammat Srimati, the widow, in case she wanted to file objections. This she did not do. Under these circumstances the order passed cannot be said to be in any way wrong. The appeal is dismissed with costs.

*Appeal dismissed.*

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May, 22.

*Before Mr. Justice Lindsay and Mr. Justice Kanhaiya Lal.*

KASHI PRASAD AND ANOTHER (JUDGMENT-DEBTORS) v.  
MATHURA PRASAD AND OTHERS (DECREE-HOLDERS).\*

*Partition—Appeal against final decree—Execution—Application for execution by parties who did not themselves dispute the decree—Limitation.*

A decree in a suit for partition must be treated as a single decree and not as a series of decrees in favour of or against various parties to the case. Where, therefore, there has been an appeal and parties to the suit and the appeal are seeking to recover in execution sums of money awarded to them by the decree, limitation will run from the date of the appellate decree and not from the date of the final decree of the original court. Nor is the situation affected by the fact that the parties seeking execution did not, in the appellate court, take any exception to the decree. *Mashiat-un-nissa v. Rani* (1), distinguished.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. *Sankar Saran* and *Munshi Janki Prasad*, for the appellants.

*Munshi Gulzari Lal*, for the respondents.

LINDSAY and KANHAIYA LAL, JJ. :—This is an appeal in the execution department. It appears that on the 19th of March, 1923, B. Mathura Prasad and Harbans Prasad made an application for execution against the appellants here, namely, Kashi Prasad and Madan Mohan Prasad to recover a sum of Rs. 3,152.

\* First Appeal No. 316 of 1924, from a decree of Raj Behari Lal, Subordinate Judge of Ghazipur, dated the 12th of March, 1924.

(1) (1899) I.L.R., 18 All., 1.

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The appellants here challenged the application alleging that it had been made beyond time and was not maintainable. The court below has held that the application is within limitation and now we have this appeal in which we are asked to find that the order of the court below is wrong.

The application now under consideration was based upon an order contained in a decree which was passed on the 29th of January, 1917. That was a final decree in a partition suit. In that suit the present appellants were arrayed as the third set of defendants and Mathura Prasad and Harbans Prasad who have made this application for execution were arrayed as the first and fourth sets of defendants.

Under the terms of the final decree passed by the court below on the 29th of January, 1917, the third set of defendants were directed to pay to Mathura Prasad, the first set of defendants and Harbans Prasad, the fourth set of defendants, Rs. 2,335-8-3.

If limitation for the application which we are now considering is to be deemed to run from the date of this final decree, there might be some force in the objection which was made by the present appellants. It appears, however, that on the 20th of November, 1917, the plaintiffs in that suit, Nandan Prasad and others filed an appeal against the final decree in the High Court. That appeal was finally disposed of by this Court on the 9th of February, 1922. This Court dismissed both the appeals and the cross-objections. It is stated that neither Mathura Prasad the first set, nor Harbans the fourth set, nor the present appellants Kashi Prasad and Madan Mohan the third set, raised any objections to the final decree in the course of this appeal by way of cross-objection or otherwise. On the other hand, it is admitted that these persons were all parties to the appeal in this Court.

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We are of opinion that the Subordinate Judge was right in holding that limitation for the execution of this decree which we are now dealing with began to run from the date of the High Court's decree, that is to say, the 9th of February, 1922. We do not think it can be maintained that because the present appellants here or the present respondents did not challenge the final decree in the proceedings by way of appeal which were taken in this Court that therefore their relations are governed entirely by the final decree of the 29th of January, 1917, as passed by the trial court.

It is clear to us that when the appeal against the final decree was filed by the plaintiffs in the partition suit, the entire partition was under review, and if it had so happened that any relief had been given to the plaintiffs appellants in that appeal, the necessary consequence would have been that the whole partition decree would have had to be altered. In our opinion the decree must be treated as a single decree and not as a series of decrees in favour of or against various parties to the case. We are referred by the appellant's learned counsel to the Full Bench ruling of this Court reported in *Mashiat-un-nissa v. Rani* (1). That case is clearly distinguishable from the case which we are now dealing with. We hold that the court below was right in the view it took of this question of limitation and we dismiss the appeal accordingly with costs.

*Appeal dismissed.*

(1) (1889) I.L.R., 18 All., 1.