

the application was therefore dismissed, then no complaint under section 210 of the Indian Penal Code would lie for making an application which was fraudulent. But, in the present case, the facts are different, because on the application made by Hikmat-ullah there was an order of attachment passed against the property of Mst. Sakina Begam and her children. It was then that they made an objection and the order of attachment was set aside. Now, in execution there are two proceedings, first attachment and then sale. We consider that the case would come under section 210, because Hikmat-ullah did obtain an order of attachment against the property of Mst. Sakina Begam for a sum which was not due from her. The wording of section 210, "whoever fraudulently obtains an order against any person for a sum not due", would accordingly apply. But, as the matter has been brought before us in revision, we think that a second section, section 209 of the Indian Penal Code, ought to be added, and we direct that section 209 of the Indian Penal Code be also added to the complaint made by the District Judge to the Magistrate. Otherwise, we dismiss this appeal with costs.

*Before Justice Sir Shah Muhammad Sulaiman and Mr. Justice Young.*

BANDHU SINGH (JUDGMENT-DEBTOR) *v.* KAYASTHA TRADING BANK (DECREE-HOLDER).\*

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*Civil Procedure Code, section 48—Twelve years' bar against execution—"Fresh application"—Application for sale of new items of property—"Fraud or force"—Frivolous objections raised by judgment-debtor.*

An application by the decree-holder for the attachment and sale of new items of property, which had never been mentioned in any of the previous applications, is a fresh application within the meaning of section 48 of the Civil Procedure Code and, if made more than twelve years after the date of the decree, cannot be entertained. The mere fact

\* First Appeal No. 422 of 1929, from a decree of S. M. Alam, Subordinate Judge of Gorakhpur, dated the 14th of August, 1929.

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that execution proceedings are still pending and have not been struck off at the time of this application is not sufficient to save the bar of limitation.

The mere fact that there has been a prolongation of the execution proceedings, due in part to the objections raised by the judgment-debtor from time to time, would not in itself amount to "fraud or force" within the meaning of sub-section (2) (a) of section 48. The raising of an objection, however frivolous, would not ordinarily amount to practising fraud on the decree-holder, for it can be easily met and disposed of by the court. Fraud must be of a nature which the decree-holder is not able to discover at the time and which helps the judgment-debtor in deceiving him and gaining time.

Mr. *Haribans Sahai*, for the appellant

The respondent was not represented.

SULAIMAN and YOUNG, JJ. :—This is a judgment-debtor's appeal arising out of an execution proceeding. Notice was served on the respondent, but no one appears on his behalf.

A simple money decree was obtained on the 9th of March, 1916, and it was put in execution. Proceedings continued off and on for a considerably long time, and on the 21st of November, 1925, an application for review was granted and the execution proceedings were restored and declared to start from the stage at which they had arrived on the 23rd of May, 1925.

Twelve years from the date of the decree expired on the 9th of March, 1928. On the 8th of May, 1928, the decree-holder filed an application for the attachment and sale of shares in two new villages which had never been mentioned in any of the previous applications. So far as the attachment of these villages was concerned, the application was undoubtedly a fresh one.

The learned Subordinate Judge has conceded that in the cases of *Ram Ratan v. Datar Kaur* (1) and *Khairat Ali v. Wahed Ali* (2) and *Krishna Dayal Gîr v. Mst.*

(1) A.I.R., 1928 Lah., 808.

(2) A.I.R., 1928 Cal., 241.

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*Sakina Bibi* (1) it has been laid down that an application for the sale of a new property cannot be acted upon by the execution court when it has been made after twelve years have elapsed from the date of the decree; but he has held that in view of the frivolous objections taken by the judgment-debtor from time to time, there was fraud or force within the meaning of section 48 of the Code of Civil Procedure, which extends the period. He has relied on the case of *Lalta Prasad v. Suraj Kumar* (2) in support of his view.

It seems to us that the decree-holder is now seeking to attach fresh property and his application for the attachment of this new property is a fresh application within the meaning of section 48 of the Code of Civil Procedure, and having been made more than twelve years after the date of the decree, cannot be entertained. The mere fact that the execution proceedings are still pending and have not been struck off would not be sufficient to save limitation.

It also seems to us that the mere fact that there has been a prolongation of the execution proceedings, due in part to the objections raised by the judgment-debtor from time to time, would not in itself amount to fraud or force within the meaning of sub-section (2), sub-clause (a) of section 48. The raising of an objection, however frivolous, would not ordinarily amount to practising fraud on the decree-holder, for it can be easily met and disposed of by the court. Fraud must be of a nature which the decree-holder is not able to discover at the time and which helps the judgment-debtor in deceiving him and gaining time. We do not think that this can be said in this case.

The result, therefore, is that the appeal is allowed, the order of the court below is set aside and the application for the attachment and sale of the shares in the two new villages dismissed with costs in both courts

(1) (1916) 34 Indian Cases, 27.

(2) (1922) I.L.R., 44 All., 319.