

Saktidat, deceased. The defendants appealed to the High Court. On their behalf it was contended that the building in dispute formed the temple of Sankata Debi and was endowed property, and was therefore not liable to be sold for the private debts of Saktidat; and that the right to officiate at the worship of an idol and to take the offerings made to it was a right which was not saleable in execution of decree.

The *Junior Government Pleader* (Babu Dwarka Nath Banarji) and Paudits *Ajudhia Nath* and *Bishambhar Nath*, for the appellants.

The *Senior Government Pleader* (Lala Juala Prasad) and Munsis *Hanuman Prasad* and *Sukh Ram*, for the respondent.

The judgment of the Court (STUART, C. J., and DUTHOIT, J.), so far as it is material for the purposes of this report, was as follows:—

DUTHOIT, J. (after holding, on the evidence, that the building in question was a religious endowment, and that it was not saleable in execution of the plaintiff's decree, continued:—) We are also of opinion, in default of any proof to the contrary, that the right of managing the temple, of officiating at the worship conducted in it, and of receiving the offerings at the shrine, legally cannot pass outside the family of the trustee Sádhu Misr, until absolute failure of succession in his family. The principle that rights of the kind under reference are by the Common Law of India inalienable has been affirmed by their Lordships of the Privy Council in *Rajah Vurmañ Valia v. Ravi Vurmañ Mutha* (1). With reference to the above remarks, we decree the appeal and dismiss the respondent's objection with costs.

Before Mr. Justice Straight and Mr. Justice Duthoit.

UGRAH NATH (JUDGMENT-DEBTOR) v. LAGANMANI (DECREE-HOLDER).\*

*Execution of decree—Application for execution—Decree directing payment to be made at a certain date—Act XV of 1877 (Limitation Act), sch. ii, Nos. 75, 179 (6).*

*L* obtained a decree against *U*, dated the 24th September, 1867, for possession of a certain estate subject to this provision, viz., that if *U* paid in cash into the treasury

\* Second Appeal, No 1 of 1881, from an order of W. Kaye, Esq., Judge of Gorakhpur, dated the 25th September 1880, affirming an order of Sayyid Nazar Ali, Munsif of Bansi, dated the 7th August, 1880.

1881

DURGA BIBI  
v  
CHANCHAL  
RAM.

1881  
July 19.

1881  
 UGRAH NATH  
 v.  
 LAGANMANI.

of the Court, year by year, for *L's* maintenance, so long as she might live, an allowance of Rs. 15 per mensem, in three instalments of Rs. 60 each, the decree for possession should not be executed, but if default were made in payment of three such instalments, *L* should be entitled to delivery of possession of such estate. The first default was made on the 18th January, 1874, but *L* waived the benefit of the provision. A fresh default was made, and on the 23rd January, 1880, *L* applied for possession of such estate. Held that the provisions of column 3, art. 75, schd ii of Act XV. of 1877, were not applicable to this case, but art. 179 (6) of that schedule contained the law which must govern it; and, the date upon which such decree became capable of execution for possession being the 18th January, 1874, the date of the first complete default, the application of the 23rd January, 1880, was barred by limitation.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Mr. Conlan, for the appellant.

Munshi Hanuman Prasad and Pandit Bishambhar Nath, for the respondent.

The judgment of the Court (STRAIGHT, J., and DUTHOIT, J.,) was delivered by

DUTHOIT, J.—This is an appeal from an order of the Judge of Gorakhpur, affirming an order of the Munsif of Bansi, directing delivery of possession to Laganmani of certain landed estate in execution of a decree of the Principal Sadr Amin of Basti, dated the 24th September, 1867. Laganmani had, on the 18th June, 1867, sued for possession of the property in question by right of succession to her deceased husband, Jadu Nath Tiwari. On the 24th September, 1867, she obtained the decree of which execution has now been ordered. The portion of it with which we are concerned runs thus: "A decree for possession of the shares claimed is passed in favour of the plaintiff, subject to the condition that, if the defendant pay in cash into the treasury of the Court, year by year, for the plaintiff's maintenance so long as she may live, an allowance of Rs. 15 per mensem, in three instalments of Rs. 60 each, the decree for possession shall not be executed: if the defendant default in three instalments, the plaintiff will be entitled to delivery of possession of the shares in execution of that decree." The applicant alleged that her allowance had never been paid with regularity, and asked that, as default had been made in more than one year's payments, possession might be delivered to her. The judgment-debtor alleged that other payments than those shown

in the Court books had been privately made to the applicant, and declared his willingness to satisfy arrears, and prayed that the request for entry on the property might be disallowed. The Court of first instance ruled that no allegation of out-of-Court payments could be listened to; and holding that the judgment-debtor was a confirmed defaulter, directed delivery of possession to the applicant of her share in the estate. In appeal to the Judge limitation was relied on, and it was pleaded that, as the last application for execution was presented more than eleven years ago, the present application was beyond time. The Judge, however, held that such part-payments on account of the allowance created a fresh limitation period, and that the present application was within time, and affirmed the Munsif's order.

It is contended in second appeal that the Judge is mistaken, and that the claim is really barred by limitation. Our sympathies are necessarily with the respondent, but we are of opinion that the appeal must prevail. The provisions of column 3, art. 75, sch. ii, Act XV of 1877, are not applicable to the circumstances of this case; for the claim is not on a promissory note or a bond, and it is an application, not a suit. Art. 179 contains the law which must govern it. And it appears from the registers of the Court of the Munsif of Bansi that the date upon which complete default first occurred (*i.e.*, as regards three over-due instalments) was the 18th January, 1874. That, therefore, was the date upon which the decree became capable of execution for possession. The original application for execution made prior to the one now in question bears date the 9th January, 1868. Clearly, therefore, the respondent's application of the 23rd January, 1880, was statutorily barred, and should have been rejected. The appeal is decreed with costs.

*Appeal allowed.*

*Before Mr. Justice Straight and Mr. Justice Duthoit.*

ALLU KHAN (DEFENDANT) v. ROSHAN KHAN (PLAINTIFF).\*

*Mortgage—Redemption—Tacking.*

The mortgagor of an estate gave the mortgagee four successive bonds for the payment of money in each of which it was stipulated that, if the amount were

\* Second Appeal, No. 1331 of 1881, from a decree of G. F. Knox, Esq., Judge of Banda, dated the 1st October, 1880, modifying a decree of Kazi Wajeh-ulla Khan, Subordinate Judge of Banda, dated the 14th August, 1880.

1881

UGRAH NATH  
v.  
LAGANMARI.

1881

July 27.