

1881
July 18.

APPELLATE CIVIL.

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

MUHAMMAD UMAR (JUDGMENT DEBTOR) v. KAMILA BIBI AND ANOTHER
(DECREE-HOLDERS).*

*Execution of decree—Amendment of revenue record—Application for execution not
“in accordance with law”—Act XV of 1877 (Limitation Act), sch. ii, No. 179.*

The holders of a decree made by a Civil Court, which directed *inter alia* that they should be maintained in possession of a share of a village, by cancelment of the order of the settlement officer directing the entry of the judgment-debtor's name in the revenue registers in respect of such share, applied for execution of such decree, improperly asking the Court executing the decree to order the Collector to amend such entry by the substitution of their names for that of the judgment-debtor in respect of such share, instead of asking it to send such officer a copy of such decree for his information, with a view to such amendment. Held that such application, not being one in accordance with law, within the meaning of No. 179, sch. ii of Act XV of 1877, was not one which would keep such decree in force.

KAMILA BIBI and Zainab Bibi held a decree against Muhammad Umar, bearing date the 6th December, 1875, which directed that they should be maintained in possession of a certain share of a certain village by cancelment of the order of the Settlement Officer directing the entry of the judgment-debtor's name in respect of such share in the revenue registers, and awarded them costs. On the 6th September, 1876, the decree-holders applied that in execution of this decree an order might issue to the Collector, directing the amendment of the settlement records, by the substitution of their names for that of the judgment-debtor. The Court executing the decree recorded a proceeding embodying the terms of this application, and directing that a copy of such proceeding and of the decree should be sent to the Collector, in order that he might make such necessary and proper changes as he thought fit. The decree-holders next applied for execution of the decree on the 3rd September, 1879, when they sought to recover the costs awarded by the decree. The Court executing the decree held that, inasmuch as the Civil Courts were prohibited by the High Court's Circular Letter No. 6, dated the 2nd June, 1870,

* Second Appeal, No. 20 of 1881, from an order of H. D. Willock, Esq., Judge of Azamgarh, dated the 6th November, 1880, reversing an order of Maulvi Kamar-ud-din, Munsif of Azamgarh, dated the 24th July, 1880.

from issuing orders to Revenue Courts, and were directed simply to forward copies of decrees for information, the application of the 6th September, 1876, was not an application "in accordance with law," within the meaning of No. 179 of sch. ii of Act XV of 1877, and therefore did not keep the decree in force, and the application of the 3rd September, 1879, was barred by limitation. On appeal by the decree-holders the lower appellate Court held that the application of the 6th September, 1876, kept the decree in force. Its reasons for so holding were as follows: "It is urged that such application was not 'in accordance with law,' as provided by cl. 4, art. 179, sch. ii of Act XV of 1877, and hence the application cannot save the period of limitation: I cannot accept this plea: the decree-holders certainly asked the Court to commit an act beyond its power, and the Court erred in complying with its request; but the last clause of the article referred to provides that the period of limitation runs from the date of applying to "take some step in aid of execution of the decree or order," and rightly or wrongly the decree-holders did take a step to show their desire to maintain the decree." The judgment-debtor appealed to the High Court, contending that the application of the 6th September, 1876, was not an application in accordance with law for execution, or a step in aid of execution, of the decree, within the meaning of No. 179, sch. ii of Act XV of 1877, and therefore the application of the 3rd September, 1879, was barred by limitation.

The *Junior Government Pleader* (Babu Dwarika Nath Banarji) and Munshi *Hanuman Prasad*, for the appellant.

Lala *Latta Prasad*, for the respondents.

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

STRAIGHT, J.—We do not think that the application of the 6th September, 1876, was an application in accordance with law for execution, or a step in aid of execution, within the meaning of art. 179, sch. ii of Act XV of 1877, which provides the law that governs the present proceedings. The appeal is decreed with costs.

Appeal allowed.