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January 10.

*Before Mr. Justice Oldfield and Mr. Justice Straight.*

KHAIR-UN-NISSA (JUDGMENT-DEBTOR) v. GAURI SHANKAR (DECREE-HOLDER).\*

*Application for execution of decree— Step in aid of execution—Act XV of 1877 (Limitation Act), sch. ii, No. 179.*

G sued K, as the legal representative of her deceased husband S, on a bond executed by S in his favour, and obtained a decree. Subsequently he sued K on a bond which she had personally executed in his favour, and obtained a decree. On the 7th September, 1875, he applied for execution of both these decrees, and S's landed estate, which stood recorded in K's name, was attached. This estate was sold on the 20th February, 1877, being put up for sale in one lot, in satisfaction of both decrees, in accordance with an application made by G on the 16th February, and was purchased by G for the amount of the decrees. This sale was subsequently confirmed, and on the 10th December, 1877, satisfaction of the decrees was entered up, and the execution-proceedings struck off the file. Subsequently three of the heirs of S in one case, and two in another, instituted suits against G, claiming to recover from him such portion of the proceeds of the sale of S's property as had been appropriated to the discharge of G's decree against M, and such heirs obtained decrees for certain sums, which G was obliged to pay. G thereupon on the 16th May, 1879, applied for execution of his decree against M. Held that such application was not one in continuation of that made on the 7th September, 1875, but was a fresh application, and the application made by G on the 16th February, 1877, was not one for a step in aid of execution, within the meaning of No. 179, sch ii of Act XV of 1877, from which limitation could be computed, and the application of the 16th May, 1879, was barred by limitation. *Booboo Pyaroo Tuhobildarinee v. Syud Nazir Hossain* (1); *Paras Ram v. Gardner* (2); and *Issurree Dasse v. Abdool Khalak* (3) distinguished by STRAIGHT, J.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of Straight, J.

Mr. Conlan, for the appellant.

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

The Court (OLDFIELD, J., and STRAIGHT, J.,) delivered the following judgments :

STRAIGHT, J.—This is a second appeal from an order of the Judge of Allahabad passed in appeal on the 19th February, 1880,

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\* Second Appeal, No. 36 of 1880, from an order of H. Lushington, Esq., Judge of Allahabad, dated the 19th February, 1880, affirming an order of Rai Makhun Lal, Subordinate Judge of Allahabad, dated the 15th October, 1879.

(1) 23 W. R., 183.

(2) I. L. R., 1 All., 355.

(3) I. L. R., 4 Calc., 415.

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confirming a decision of the Subordinate Judge, allowing the respondent decree-holder to proceed with execution of a decree against the appellant his judgment-debtor. The facts are as follows:—One Syed Muhammad on the 15th April, 1866, executed a bond to the respondent, Gauri Shankar, pledging his property for an advance of Rs. 5,000. On the 25th November, 1871, the appellant, Khair-un-nissa, his wife, also made an hypothecation to the same person for a loan of Rs. 1,200. After the death of Syed Muhammad, the respondent Gauri Shankar sued Khair-un-nissa, as her husband's legal representative, on the bond of April, 1866, and obtained a decree on the 30th May, 1873. He then brought a second suit against her in respect of her own bond of November, 1871, and got a decree on the 17th March, 1874. On the 7th September, 1875, he applied for execution of both these decrees and attached all the property left by Syed Muhammad, which stood recorded in the name of Khair-un-nissa. It was sold in one lot on the 20th February, 1877, in accordance with an application put in by the decree-holder on the 16th February, 1877; and the amount of his two decrees aggregating Rs. 10,850, the decree-holder purchased for that sum and filed a receipt in full discharge of both of them. Despite objection by the judgment-debtor this sale was in due course confirmed to him, and on the 10th December, 1877, satisfaction was entered up and the execution-proceeding struck off. No point arises in the present appeal with reference to the first decree obtained upon Syed Muhammad's bond of April, 1866, but the questions raised relate to the second decree under which Khair-un-nissa was judgment-debtor in respect of the bond personally executed by her on the 25th November, 1877. It is this decree that the respondent Gauri Shankar is now seeking to execute for the following reasons. Subsequent to the sale in February, 1877, three of the heirs of Syed Muhammad in one case, and two in another, instituted suits against the decree-holder-respondent Gauri Shankar, to recover from him such portion of the proceeds of the sale of Syed Muhammad's property as had not been absorbed in satisfying the decree upon his personal bond of the 15th April, 1866. In respect of this they allowed a deduction to the extent claimed by Gauri Shankar, but the residue, which had been

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appropriated to discharge the decree against Khair-un-nissa, they claimed to have paid to them. In the result they severally got decrees on the 17th May, 1878, and the 14th September, 1878, for Rs. 1,259-10-7 and Rs. 1,123-10-0, respectively, and these amounts Gauri Shankar, the respondent, has had to pay. Being thus deprived of the fruits of his execution-sale, so far as his decree against Khair-un-nissa was concerned, he applied on the 16th May, 1879, for leave to again execute it. The judgment-debtor objected that, as satisfaction had been entered up, the execution-proceedings could not be re-opened, and moreover that, three years having elapsed since the last application for execution on the 7th September, 1875, limitation barred. Both the lower Courts disallowed these objections, and the judgment-debtor appeals to this Court, urging the same grounds, and arguing further that the decree-holder by purchasing at the auction-sale merged his character of decree-holder in that of auction-purchaser, and the sale having been regularly completed and satisfaction entered up, there is neither decree-holder to apply for nor decree to put into execution. Stress has been laid upon the application of the 16th February, 1877, but in my opinion this cannot be regarded as an application for a step in aid of execution within art. 179, sch. ii of Act XV. of 1877. Failing to sustain this contention it is then urged for the decree-holder that the application of the 16th May, 1879, was in reality only a step in continuation of the former application of the 7th September, 1875, and that upon the authority of three cases—*Booboo Pyaroo Tuhobildarinee v. Syud Nazir Hossein* (1) : *Paras Ram v. Gardner* (2) : and *Issurree Dasse v. Abdool Khalak* (3)—the decisions of the lower Courts adopting this view should be upheld. I am of opinion that this argument is a fallacious one and cannot be accepted. It appears to me that all these cases referred to are clearly distinguishable from the present. In *Booboo Pyaroo Tuhobildarinee v. Syud Nazir Hossein* (1) the execution-proceedings were struck off in consequence of a decision being passed adverse to the decree-holder, upon an objection made by a third party, under s. 246 of Act VIII. of 1859, in consequence of which he was compelled to bring a regular suit to have the pro-

(1) 23 W. R., 183. (2) I. L. R., 1 All., 355.  
(3) I. L. R., 4 Calc., 415.

perty, from which the attachment had been removed, declared to be the property of his judgment-debtor, and then having succeeded in that suit the decree-holder applied for resumption of the execution, which had been interrupted. The same state of facts existed in the case which was made the subject of the Full Bench decision of this Court (1); and in that of *Issurree Dassie v. Abdool Khalak* (2) the judgment-debtor had got a sale set aside and the proceeds refunded by the decree-holder, who thereupon applied to execute his decree afresh. It will thus be observed that in all these cases there was a contest going on either between the decree-holder and a successful objector, or between the decree-holder and the judgment-debtor. But in the matter now before us the decree-holder attached and brought to sale, as the rights and interests of Khair-un-nissa, rights and interests that she did not possess, in other words, she had no saleable interest to bring to sale. He himself having purchased such rights and interests, upon the strength of such purchase gave a receipt in discharge of both his decrees by virtue of which satisfaction was entered up and the execution-proceedings struck off on 10th December, 1877. What has since happened is that in consequence of two regular suits brought against him by the heirs of Syed Muhammad he has had, not to surrender the property purchased by him to the extent of their shares, but to compensate them by a money equivalent. When the sale took place on the 20th February, 1877, Act VIII of 1859 was in force, and there was then no provision such as is now to be found in s. 313 of Act X of 1877. A purchaser at auction-sale at that time took the risk of the judgment-debtor's having a saleable interest, and it does not appear to me that the decree-holder-respondent in the present case is in any better or worse position than an ordinary auction-purchaser. If he had the misfortune to buy something that his judgment-debtor had not to sell, he had only himself to blame for putting up an interest to sale that did not exist. Under such circumstances it would seem that satisfaction was rightly entered up and the execution-proceedings properly struck off. I am therefore of opinion that the application of the 16th May, 1879, was a fresh application, and that, the last antecedent application having been made

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(1) I. L. R., 1 All., 355.

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on 7th September, 1875, the decree-holder-respondent is barred from executing his decree. I would accordingly decree the appeal with costs.

OLDFIELD, J.—I am of opinion that the present application of the 16th May, 1879, on the part of the decree-holder to execute the decree is barred under art. 179, sch. ii of the Limitation Law. I concur with Mr. Justice Straight in holding that it cannot be considered to be a continuation of the application of the 7th September, 1875, but is a fresh application, and I do not consider that the intermediate application made by the decree-holder on the 16th February, 1877, is such an application as is contemplated in art. 179, so as to allow the period to run from its date. I therefore on this ground concur in the proposed order.

*Appeal allowed.*

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January 14.

*Before Mr. Justice Spankie and Mr. Justice Oldfield.*

CHATTAR SINGH (PLAINTIFF) v. RAM LAL AND ANOTHER (DEFENDANTS)\*

*Registered and unregistered Documents—Act XIX of 1843—Act VIII of 1873 (Registration Act)—Act III of 1877 (Registration Act), s. 50.*

A document executed while Act XIX of 1843 was in force and not registered thereunder cannot be postponed to a document executed in 1873 and registered under Act VIII of 1871.

THIS was a suit in which the plaintiff claimed possession of a certain share in a village called Bannapur. This share had been hypothecated to the plaintiff as collateral security for the payment of two bonds dated the 9th January, 1873, and the 31st December, 1873, respectively, which had been given to him by Sham Lal the brother of the defendants. The plaintiff obtained a decree on these bonds enforcing the hypothecation on the 27th March, 1876. In 1878 the share was put up for sale in execution of this decree and was purchased by the plaintiff, the certificate of sale granted to him bearing date the 23rd December, 1878. When the plaintiff endeavoured to obtain possession of the share he was resisted by the defendants. They claimed by virtue of a lease which had been

\* Second Appeal, No. 774 of 1880, from a decree of R. G. Currie, Esq., Judge of Aligarh, dated the 20th April, 1880, modifying a decree of Maulvi Farid-ud-din Ahmad, Subordinate Judge of Aligarh, dated the 13th February, 1880.