

Before Mr. Justice Pearson and Mr. Justice Oldfield.

AMAR SINGH (JUDGMENT-DEBTOR) v. TIKA (DECREE-HOLDER).*

1880
August 10.

Execution of Decree—Application to enforce Decree—Oral application for proclamation of sale—Act IX of 1871 (Limitation Act), sch. ii, art. 167.

An oral application, on a sale of immoveable property in the execution of a decree having been adjourned, for the fixing of a fresh date for the sale is an application to enforce the decree, within the meaning of art. 167, sch. ii of Act IX of 1871. An application to enforce the decree made within three years from the date of such an oral application will therefore be within time.

The decree of which execution was sought in this case was a money-decree bearing date the 24th February, 1873. The first application for its execution was made on the 20th March, 1873. On that occasion certain immoveable property belonging to the judgment-debtor was attached, and was proclaimed for sale on the 20th May, 1873. The intended sale did not take place on that day, but was adjourned by the officer appointed to conduct it, by reason that no purchasers appeared. The report by that officer of his proceedings was laid before the Court executing the decree on the 30th May, 1873, which directed that the case should be brought before it on the 6th June, 1873. On that day the decree-holder applied orally for the issue of fresh proclamations of sale. The Court granted this application, and the property was proclaimed for sale on the 21st July, 1873. The sale was again adjourned by the officer appointed to conduct it for the same reason as it had previously been adjourned. The case was brought before the Court, with the report of the officer appointed to conduct the sale, on the 30th July, 1873, when the decree-holder again applied orally for the issue of fresh proclamations of sale. This application was granted, and the property was proclaimed for sale on the 20th September, 1873. On that date the property was sold, the sale-proceeds only satisfying the decree in part, and on the 25th November, 1873, the execution-case was struck off the pending file. On the 29th June, 1876, the decree-holder again applied for the execution of the decree. The notice to the judgment-debtor to show cause why the decree should not be executed required by s. 216

* Second Appeal, No. 40 of 1880, from an order of J. H. Prinsep, Esq., Judge of Cawnpore, dated the 17th April, 1880, reversing an order of Munshi Lalta Etásad, Munsif of Cawnpore, dated the 1st May, 1879.

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of Act VIII of 1859 was issued, but the execution-proceedings were subsequently struck off the file for default on the 30th August, 1876, the decree-holder having failed to pay certain process-fees. On the 4th March, 1879, the decree-holder made the present application for the execution of the decree. The judgment-debtor objected that the execution of the decree was barred by limitation, the application of the 29th June, 1876, not having been made within the time allowed by law. The Court of first instance held, applying the Limitation Act of 1871, that the application of the 29th June, 1876, was not within time and execution of the decree was barred by limitation. On appeal the lower appellate Court held that that application was within time, and the execution of the decree was not barred, on the ground, amongst others, that that application was made within three years from the oral application of the 30th July, 1873, which was a proceeding to enforce the decree.

The judgment-debtor appealed to the High Court contending that the oral application of the 30th July, 1873, was not one from which the limitation under Act IX of 1871, which was the limitation law applicable, could be computed, not being an application to enforce the decree within the meaning of art. 167, sch. ii. of that Act.

Pandit *Nand Lal*, for the appellant.

The *Junior Government Pleader* (Babu *Dwarkanath Bunnarji*), for the respondent.

The judgment of the Court (PEARSON, J., and OLDFIELD, J.) was delivered by

PEARSON, J.—The applications of the 30th May, 1873, and of the 29th June, 1876, were, in our opinion, governed by the Limitation Law of 1871. We are further of opinion that the oral applications made to the Court on the 6th June and 30th July, 1873, to fix fresh dates for the sale were applications to enforce the decree within the meaning of art. 167, sch. ii. of that law. The application of 29th June, 1876, was within three years from the 30th July, 1873, and was therefore within time. The appeal fails and is dismissed with costs,

Appeal dismissed.