

1883 omitted to qualify my remarks by observing that they should be confined to the particular case as to which they were made.

HAIR RAM  
v.  
DURGA  
PRASAD.

I concur with the Chief Justice that this appeal must be decreed with costs in both Courts, and that the suit should stand dismissed.

*Appeal allowed.*

*Before Mr. Justice Oldfield and Mr. Justice Tyrrell.*

NATHU (PLAINTIFF) v. BADRI DAS AND OTHERS (DEFENDANTS).\*

1883  
June 22.

*Suit to set aside execution-sale—Suit for possession of immoveable property—Act XV of 1877 (Limitation Act), sch. ii., No. 12.*

The plaintiff, alleging that certain immoveable property belonging to him had been sold in execution of a decree as the property of another, sued the purchaser to have the sale set aside, and to recover possession of the property. *Held* that the suit was one for possession of immoveable property to which the period of limitation of twelve years was applicable.

THE plaintiff in this suit stated in his plaint that his father had died, leaving a house, which came into his and his mother's possession; that the defendant Badri Das caused the house to be put up for sale in execution of a decree which he held against one Chheda, and purchased it himself, and appropriated the materials of the house; that the plaintiff's mother was dead, and he was her heir; that the house had not belonged to Chheda; and that the plaintiff was a minor when the house was sold. On these allegations the plaintiff sued Badri Das and his transferee to have the sale set aside, and recover possession of the site of the house, and the value of the materials of the house. The lower Courts held that the suit was governed by the limitation provided by No. 12, sch. ii. of the Limitation Act, 1877, and finding that the plaintiff had not brought the suit within one year from the date he attained his age of majority, dismissed it.

In second appeal the plaintiff contended that the suit was one for possession of immoveable property, and the period of limitation applicable to it was therefore twelve years.

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\* Second Appeal, No. 147 of 1883, from a decree of Maulvi Muhammad Abdul Qayum, Subordinate Judge of Bareilly, dated the 29th September 1882, affirming a decree of Maulvi Azizuddin, Munsif of Pilibhit, dated the 7th July 1882.

Munshi *Hanuman Prasad* for the appellant.

Munshi *Kashi Prasad*, *Lala Lalta Prasad*, and *Mir Zahur Husain* for the respondents.

1883

NATHU  
v.  
BADRI DAS.

The Court (OLDFIELD and TYRRELL, JJ.) delivered the following judgment:—

OLDFIELD, J.—We are of opinion that the one year's bar of limitation does not apply to this suit, for which twelve years' limitation, as a suit for possession of immoveable property, will apply. The appeal is decreed: the decree of the lower appellate Court is set aside; and the case is remanded to the Court of first instance for trial on the merits. Costs to follow the result.

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

AGHORE NATH (JUDGMENT-DEBTOR) v. SHAMA SUNDARI AND ANOTHER (DECREE-HOLDERS).\*

1883  
June 25.

*Execution of decree—Property attached in execution of decrees of Munsif and District Judge—Sale of property under order of Munsif—Civil Procedure Code, s. 285.*

Where certain immoveable property, which had been attached in execution of two decrees, one made by a Munsif and the other by the District Court to which such Munsif was subordinate, was sold under the order of the Munsif, held, following *In the matter of the petition of Badri Prasad* (1), that the sale was bad by reason of the Munsif's want of jurisdiction to order it.

ON the 3rd May 1882, certain immoveable property belonging to the judgment-debtor in this case was sold in execution of a decree. The sale was made under the order of the Munsif of Benares. At the time of the sale the property was under attachment by virtue of an order of the District Judge of Benares, dated the 22nd January 1882, made in execution of a decree passed by him. The judgment-debtor applied to have the sale set aside, under s. 311 of the Civil Procedure Code, but the Munsif rejected the application. The judgment-debtor appealed to the High Court, contending that the Munsif was not competent to order the sale, as the property had been attached by a superior Court, and the sale was therefore void.

\* First Appeal, No. 164 of 1882, from an order of Babu Madho Das, Munsif of Benares, dated the 2nd September 1882.

(1) I. L. R., 4 All., 359.