

as against the last to recover the costs of the first and second appeals, and as against the others the amount of the decree of the Munsif. The Munsif held that the application was barred by limitation as regards Buti Begam and Kaniz Kubra. The District Judge held on appeal that the case came within the operation of art. 178, sch. ii of the Limitation Act, 1877, and limitation ran from the 16th December, 1879, when the injunction restraining execution was removed.

In second appeal Buti Begam and Kaniz Kubra contended that the application was, as regards them, barred by limitation.

Pandits *Ajudhia Nath* and *Bishambhar Nath*, for the appellants.

Munshi *Kashi Prasad*, for the respondents.

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

OLDFIELD, J.—We are of opinion that the Judge is right. The present application may be regarded as one for revival of the proceedings in execution which had been stayed by injunction, and art. 178 of the Limitation Act is applicable. The principle is that recognised in *Raghubans Gir v. Sheosaran Gir* (1) and *Kalyanbhai Dipchand v. Ghanashamlal Jadunathji* (2). We dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

RAGHUBAR DAYAL (DEFENDANT) v. LACHMIN SHANKAR
(PLAINTIFF).

1883
April 19.

Mortgage—Suit by mortgagee to recover mortgage-money—Suit for money charged on immoveable property—Relief against the person of mortgagor—Act XV of 1877 (Limitation Act) sch. ii, Nos. 116, 132.

In a suit by a mortgagee to enforce the mortgage No. 132, sch. ii of the Limitation Act, 1877, is not applicable, so far as relief against the mortgagor personally is claimed. *Lallubhai v. Naran* (3) dissented from.

THIS was a suit to recover Rs. 941-13, principal and interest, under a registered bond, dated the 5th August, 1872, whereby certain immoveable property was mortgaged as collateral security for the

* Second Appeal No. 1162 of 1882, from a decree of J. M. O. Steinbelt, Esq., Judge of Banda, dated the 2nd August, 1882, affirming a decree of Kazi Wajih-ud-din Khan, Subordinate Judge of Banda, dated the 30th May, 1882.

(1) I. L. R., 5 All. 243. (2) I. L. R., 5 Bom., 29.

(3) I. L. R., 6 Bom., 719.

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payment of the bond. The bond fell due on the 12th May, 1873. The suit was instituted on the 10th March, 1882. The Court of first instance gave the plaintiff a decree for Rs. 692-13, to be enforced against the person of the defendant Raghubar Dayal as well as by enforcement of hypothecation against a part of the property set out in the bond. On appeal by the defendant Raghubar Dayal the District Court affirmed this decree. On second appeal by the defendant Raghubar Dayal, it was contended on his behalf that, so far as his person was concerned, the claim was barred by the period of six years provided for by No. 116, sch. ii of the Limitation Act, and that consequently so much of the decree as affected his person was bad in law.

Munshi *Ram Prasad* and Babu *Ram Das Chakarbaty*, for the appellants.

The respondent did not appear.

The Court (STRAIGHT and BRODHURST, JJ.) delivered the following judgment:—

STRAIGHT, J.—Although the Bombay Court have expressed a different view (I. L. R., 6 Bom. 719), the current of decisions in this Court, one of which is now in appeal before the Privy Council, has favoured the view enunciated in the first plea. We think it enough to say, that we are not prepared at this moment to depart from those decisions. The appeal must be decreed with costs, and the decree of the plaintiff will be amended by striking out so much of it as relates to the person of the defendant Raghubar Dayal.

Appeal allowed.

CIVIL REVISIONAL.

1883
 April 23.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

ILAH I BAKHSH (DEFENDANT) v. SITA AND ANOTHER (PLAINTIFFS).*

Attachment of moveable property—Suit to establish right—Small Cause Court suit—Civil Procedure Code, s. 283.

A suit under s. 283 of the Civil Procedure Code by a party against whom an order under s. 281 has been passed to establish his right to moveable

* Application No. 312 of 1882, for revision under s. 622 of Civil Procedure Code of an decree of J. R. Shiroore, Esq., Judge of the Court of Small Causes at Agra, dated the 24th April, 1882.