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limitation will begin to run is when the plaintiff first learnt that the money was retained in the possession of the defendant, instead of being paid to the person to whom he directed it to be paid. The lower Court must dispose of the point of limitation accordingly, and if the suit is not barred, decide it on the merits. We reverse the decree and remand the case accordingly. Costs to be costs in the cause.

Case remanded.

APPELLATE CIVIL

1883

February 15.

Before Mr. Justice Oldfield and Mr. Justice Brothurst.

GULAB SINGH (DECREE HOLDER) v. PEMIAN (JUDGMENT-DEBTOR).*

Execution of decree—Decree for enforcement of mortgage—Execution limited to mortgaged property—Equity.

K brought to sale in execution of a simple decree for money which he held against *P* certain property and purchased it himself. The property was subject to a mortgage at the time it was sold. Subsequently a decree was obtained against *P* enforcing this mortgage, of which *K* became the holder. *K* sought to have this decree executed, not against the mortgaged property, but against other property belonging to *P*.

Held that if *K* purchased the property knowing that it was mortgaged, or if in consequence of the mortgage he purchased it for a less sum than it would otherwise have fetched, it would be inequitable to allow him to obtain satisfaction of the decree out of the other property of *P*.

CERTAIN persons known as Khwajas Muhammad Husain, Ahmad Husain, and Muhammad Ismail applied for execution of a simple decree for money which they held against the respondent to this appeal, and certain immoveable property belonging to her was brought to sale on the 20th November, 1879, and was purchased by the Khwajas. At the time they purchased this property it was mortgaged to one Kishori Lal. The latter sued to enforce this mortgage, and obtained a decree against the respondent for the recovery of the amount of the mortgage-money from the respondent personally and by the sale of the property. This decree he assigned to Gulab Singh, appellant in this case. There being a surplus of proceeds of the sale of the 20th November,

* Second Appeal No. 86 of 1881, from an order of W. H. Hudson, Esq., Judge of Aligarh, dated the 20th August, 1881, reversing an order of Manshi Mata Prasad, Munsif of Aligarh, dated the 20th May, 1881.

1879, due to the respondent, the appellant sought to obtain the same in execution of Kishori Lal's decree. This application was allowed by the first Court. The lower appellate Court disallowed it, on the ground that the appellant was not entitled under s. 295 of the Civil Procedure Code to share in the proceeds of the sale of the 20th November, 1879. It appeared that the appellant was not the real holder of Kishori Lal's decree but the nominal holder only, the real holders being the Khwajas. It was contended by the appellant that s. 295 of the Civil Procedure Code did not affect his claim to execute his decree against the balance of the sale-proceeds in question.

Shaikh *Maula Bakhsh*, for the appellant.

The *Senior Government Pleader* (*Lala Juala Prasad*), *Pandit Ajudhia Nath*, and *Babu Aprojash Chandar Mukarji*, for the respondent.

The Court (OLDFIELD and BRODHURST, JJ.) remanded the case to the lower appellate Court to determine the issues whether the Khwajas had purchased the property of the respondent, knowing that it was mortgaged to Kishori Lal, and whether they had purchased the property for less than they would have purchased it, had it not been mortgaged to Kishori Lal.

The order of remand was as follows :

OLDFIELD, J. (After stating the facts stated above continued:)—
S. 295 has nothing to do with the case before us. It applies to a case where more persons than one have, prior to the realization by sale in execution of a decree, applied to the Court by which such assets are held for execution of decrees for money against the same judgment-debtor. Here the realization by sale in execution of the Khwajas' decree had taken place before Kishori Lal obtained a decree. But it will be seen that the Khwajas are the real holders of the decree now in execution, and that it is a decree not only against the judgment-debtor personally, but against the property of the judgment-debtor, which the Khwajas put up to sale and purchased in execution of their money-decree, and which was the security for the debt, and which is liable to satisfy the decree. If therefore the Khwajas, Muhammad Husain, Ahmad Husain, and Muhammad Ismail purchased the judgment-debtor's property with the knowledge that it was

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liable for the amount of the debt due to Kishori Lal, for which the property was security, or if in consequence of the lien they purchased the property for a less sum than otherwise it would have fetched, it would be inequitable to permit them to satisfy the decree now in execution from the personal estate of the judgment-debtor; they would in fact be paid twice over. The issue we have above indicated is remitted for trial, and the case remanded.

The lower appellate Court found that the Khwajas did not purchase the property of their judgment-debtor, the respondent, which was put up for sale in execution of their own decree, with the knowledge that it had been mortgaged to Kishori Lal; and that they did not obtain such property for a less sum than it would have otherwise fetched in consequence of the lien of Kishori Lal.

On the return of these findings the following order was made by the Court (OLDFIELD and BRODHURST, JJ.) :—

OLDFIELD, J.—We must accept the finding of the lower appellate Court on the issues remitted, and reverse the order of the lower appellate Court and restore that of the Court of first instance, with costs.

Appeal allowed.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

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February 16.

ALI MUHAMMAD KHAN (JUDGMENT-DEBTOR) v. GUR PRASAD AND ANOTHER (DECREE-HOLDERS).*

Execution of decree—“ Step in aid of execution ”—Act XV. of 1877 (Limitation Act), sch. ii., No. 179 (4).

An application by a decree-holder in the course of an investigation into an objection to the attachment of property to have his witnesses summoned is an application within the meaning of No. 179, (4), sch. ii of the Limitation Act, 1877.

ON the 7th May, 1878, the decree-holders in this case applied for execution. The proceedings taken in pursuance of this application were interrupted on the 15th July, 1878, by a person intervening and claiming the property which had been attached in execution of the decree. The objections of this person were heard and disallowed finally on the 20th December, 1878. During the investigation of the objections the decree-holders, on or about the 26th August, 1878, made an oral application for the issue of sum-

* Second Appeal No. 41 of 1882, from an order of C. Daniel, Esq., Judge of Moradabad, dated the 1st May, 1882, affirming an order of Maulvi Nasir Ali Khan Subordinate Judge of Moradabad, dated the 16th December, 1881.