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so far as Damru himself was concerned, he cannot be allowed to say that, whilst he consented to those shares being acquired by his co-plaintiffs, he has been injured by those shares being purchased by the vendee—the co-plaintiffs and the vendee being both strangers. In other words, Damru must be regarded to have foregone his pre-emptive right to the extent of the shares of his co-plaintiffs, and could not therefore, at all events, contest the sale to that extent. To that extent, therefore, the sale in favour of the defendant-vendee must be held to have remained uncontested by Damru, and it has been ingeniously urged by the learned pleader for the appellant that to that indefinite extent the vendee must be regarded to be the co-sharer of the patti in which the share in dispute is situate, and therefore entitled to the pre-emptive rights equally with the plaintiff Damru. The arguments addressed to us on behalf of the respondent aimed at drawing a distinction between the present case and cases in which a person possessing the pre-emptive right has joined a stranger in the purchase. But for the reasons already stated, we are of opinion that no such distinction in principle exists, and we hold that, as a co-sharer entitled to pre-emption forfeits the benefit of the right by joining a stranger in purchasing the property, so a pre-emptor loses his right of enforcing pre-emption by joining in his claim persons who are as much strangers as the vendee. We decree this appeal, and setting aside the decrees of both the lower Courts, dismiss the suit, the plaintiff-respondent paying the costs incurred in all the Courts.

Before Mr. Justice Tyrrell and Mr. Justice Mahmood.

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JANKI PRASAD (DECREE-HOLDER) *v.* GHULAM ALI (JUDGMENT-DEBTOR.) *

Execution of decree—Acknowledgment in writing—Part-payment—Act XV. of 1877 *(Limitation Act), ss.* 19, 20, *and sch.* ii, *No.* 179.

A decree for money, dated the 24th June 1878, directed that a certain instalment should be paid on the 22nd July 1878, and a like on the 20th December 1878, and the balance by certain instalments commencing from a certain date; and that, in case of default, the decree-holder might realize the whole amount of the decree. The instalments were not paid at the fixed dates, but part-

* Second Appeal No. 14 of 1882, frm an order of W. Duthoit, Esq., Judge of Allahabad, dated the 15th January, 1882, reversing an order of Babu Promoda Charan Banarji, Subordinate Judge of Allahabad, dated the 12th November, 1881.

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payments of the amount of the decree were made by the judgment-debtor from time to time out of court. On the 7th May 1879 he made a part-payment and an endorsement on the decree to the following effect:—"I, G, judgment-debtor of this decree, have myself paid Rs—,and have endorsed this payment on the decree in my own handwriting." On the 5th September 1881 the decree-holder applied for execution of the whole decree.

Held by the Court that the application was governed by the rule contained in s. 19 of the Limitation Act 1877; that the endorsement made by the judgment-debtor on the decree was an acknowledgment of liability under the decree; and that consequently the period of limitation for the application should be computed from the time such endorsement was made, and the application was therefore within time. *Ramhit Rai* v. *Satgur Rai* (1) followed, but with doubt.

Per MAHMOOD, J.—That, following the *ratio decidendi* in *Ramhit Rai* v. *Satgur Rai* (1), the part-payment made and endorsed on the decree by the judgment-debtor fell within the terms of s. 20 of the Limitation Act 1877. *Asmutullah Dalal* v. *Kally Churn Mitter* (2) distinguished.

Also *per* MAHMOOD, J.—That it was doubtful whether in this case the decree holder was bound to execute the whole decree when the first default occurred, as the terms of the decree appeared to give the decree-holder an option in the matter, and therefore whether the application for execution was barred because it was made more that three years after that date. *Shib Dat* v. *Kalka Prasad* (3) distinguished.

THERE were originally two judgment-debtors in this case, but the appeal related only to Ghulam Ali. The decree in this case was passed on the 24th June, 1878. It was a decree directing the payment of money by instalments of Rs. 150 on the 22nd July, 1878, and the 20th December, 1878, and the remaining amount was to be paid by yearly instalments of Rs. 125 each, commencing from the end of Jaith, 1286 fasli. There was a condition attached to the decree, of which the following is a translation:—"In case of breach of agreement, the plaintiff has the power that, by cancelling the fixed instalments, he may realize the entire decretal money by enforcement of lien on the hypothecated property in execution of the decree." It was admitted that the instalments fixed by the decree were not duly paid, but that on the 7th May, 1879, a payment of Rs. 50 was made on behalf of Ghulam Ali, judgment-debtor; and again on the 4th February, 1880, he paid Rs. 70; and a further sum of Rs. 80 on the 13th January, 1881. All these payments were made out of Court, and on the

(1) I. L. R., 3 All. 247. (2) I. L. R., 7 Calc. 56.
(3) I. L. R., 2 All. 443.

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last two occasions the judgment-debtor endorsed the decree in his own handwriting in the following words :—"I, Ghulam Ali, judgment-debtor of this decree, have myself paid Rs.——, and have endorsed this payment on the decree in my own handwriting." The present application for execution of the decree was made on the 5th September, 1881. The judgment-debtor having pleaded limitation, the Court of first instance, following *Shib Dat* v. *Kalka Prasad* (1), held that the whole amount of the decree became due on the 22nd July, 1878, when default in payment of the first instalment took place, and that the decree would therefore, under ordinary circumstances, be barred by limitation. But the Court held that the endorsements of the 4th February, 1880, and the 13th January, 1881, amounted to written acknowledgments within the terms of s. 19 of the Limitation Act (XV. of 1877), and that the application for execution was therefore within limitation. The lower appellate Court, without considering it necessary to determine whether the endorsements amounted to an acknowledgment, held, following the ruling of the Calcutta High Court in *Kally Prosonno Hazra* v. *Heera Lall Mundle* (2) and in *Mungol Prashad Dichit* v. *Shama Kanto Lahory Chowdhry* (3), that the word "*debt*" in ss. 20 and 21 of Act IX. of 1871 did not include a judgment-debt; that although that Act had been repealed, the reasons on which the rulings of the Calcutta High Court were based were still applicable; and that therefore if the word *debt* was not large enough to cover a judgment-debt, still less would the word "*right*" as used in s. 19 of the present Limitation Act be wide enough to include the right of the decree-holder to execute his decree. The lower appellate Court further held, relying upon the ruling of the Calcutta High Court in the case of *Asmutullah Dalal* v. *Kally Churn Mitter* (4), that "there is nothing in the present law to show that there are, or may be, various recurrent starting points from which limitation is to run in respect of the execution of a decree as a whole after it has become final, excepting that each application or notice referred to in clauses 4 and 5 of art. 179 of the second schedule gives a fresh starting point, otherwise there is but

(1) I. L. R., 2 All 443.
(2) I. L. R., 2 Calc. 468.
(3) I. L. R., 4 Calc. 708.
(4) I. L. R., 7 Calc. 56.

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one starting point provided for limitation in respect of execution of a decree *as a whole, viz.*, the date of its becoming final; or if the decree orders that the whole amount be paid on a certain date, then such date." On this ground the lower appellate Court reversing the order of the first Court held that the execution of the decree was barred by limitation.

In second appeal the contention of the parties involved the determination of the following points:—(i) Whether the rule contained in s. 19 of the Limitation Act (XV. of 1877) governs applications for execution of decrees? (ii) If so, whether the endorsements by Ghulam Ali, judgment-debtor, amounted to such acknowledgment as is contemplated by that section? (iii) Whether part-payment of the decretal money by the judgment-debtor Ghulam Ali amounted to such part-payment as would fall under the purview of s. 20 of the Limitation Act (XV. of 1877)? (iv) Whether, under the terms of the decree, the default in payment of the first instalment, which became due on the 22nd July, 1878, had the effect of rendering the entire decree necessarily executable at once, so as to bar the execution of the decree even in respect of such instalments as would otherwise be within limitation?

Babu *Ratan Chand*, for the appellant (decree-holder).

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*) and Pandit *Ajudhia Nath*, for the respondent (judgment-debtor),

The Court (TYRRELL and MAHMOOD, JJ.,) delivered the following judgments:—

MAHMOOD, J. (after stating the facts of the case as they have been stated above, continued:)—I confess that at the hearing of the case I entertained serious doubts whether the words of ss. 19 and 20 of the present Limitation Act included the rights of a decree-holder and judgment-debts. And, whilst I was not satisfied with the reasons on which the judgments of the Calcutta High Court in the cases already referred to are based, the argument on behalf of the judgment-debtor addressed to us by the learned Junior Government Pleader produced an impression upon my mind. It was therefore my intention, with the concurrence of my brother Tyrrell, to refer the question to the Full Bench; but I have since been referred

to a reeent Full Bench ruling of this Court in *Ramlit Rai* v. *Satgur Rai* (1), in which all the learned Judges have held that "an application for the execution of a decree is an application in respect of a '*right*,' that is to say, the right of the decree-holder to execution within the meaning of s. 19 of Act XV. of 1877." I think we are bound to follow the ruling, and I hold accordingly in regard to the first point in appeal.

In regard to the second point in this case, I am of opinion that the wording of the endorsements by Ghulam Ali leave no doubt that they were intended to be acknowledgments of his liability under the decree. The original Hindustani words "*madyun-i-digri-i-haza*," though no doubt descriptive of the judgment-debtor, necessarily imply the admission of liability under the decree, as they undoubtedly would if the endorsements had been made on a bond, using of course, in the latter case, the words "*madyun-i-tamassuk-i-haza*" instead of "*madyun-i-digri-i-haza.*"

I now come to the third point in the case, *viz.*, the question of part-payment. In deciding this point it seems to me that we are again bound to follow the Full Bench ruling already cited. Ss. 19 and 20 of the Limitation Act contain rules of the same nature in regard to limitation. They are both rules whereby the period of limitation is interrupted, and the effect of those two sections, so far as debts are concerned, is to place acknowledgment and part-payment on the same footing—the acknowledgment and the part-payment being equally required to be made within limitation, and the fact to appear in the handwriting of the person making the same. Both those sections must therefore be read together, and the *ratio decidendi* in regard to both questions must therefore be the same. In the case of *Asmutullah Dalal* (2), relied upon by the lower appellate Court, the effect of s. 20 of the Limitation Act does not appear to have been considered, and the judgment would at first sight seem to proceed upon the implied assumption that that section has no application to part-payment of judgment-debts at all. It does not, however, appear that in that case the fact of part-payment appeared in the handwriting of the judgment-debtor as required by s. 20. I therefore hold that that ruling has no application to the point now under con-

(1) I. L. R., 3 All. 247. (2) I. L. R., 7, Calc. 56.

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sideration, and that the part-payments made and endorsed by Ghulam Ali on the decree fall with the terms of s. 20 of the Limitation Act, as they were made within limitation from the date the decree became capable of execution.

The view which I have taken in regard to the first three points makes it unnecessary to decide the last; for, according to that view, the effect of the acknowledgments and the part-payments by Ghulam Ali is to bring the present application for execution within limitation as against him. I may, however, express a doubt whether the terms of the decree in the present case are not to be distinguished from the decree in the case of *Shib Dat* (1), on which the Subordinate Judge has relied for holding that the decree-holder was absolutely bound to execute the decree when the default in payment of the first instalment took place, and that the present application having been made three years after that date, would have been altogether barred by limitation, but for the acknowledgments in writing made by Ghulam Ali, judgment-debtor. The terms of the decree in *Shib Dat's Case* would appear to be imperative, whilst in the present case they would seem to be only optional. I would decree this appeal, and reversing the order of the lower appellate Court, restore that of the Subordinate Judge.

TYRRELL, J.—The unanimous ruling of this Court in the Full Bench case of *Ramhit Rai* v. *Satgur Rai* (2), which we are bound to follow and apply, disposes of this appeal.

But with great respect for the authority of that judgment, I am unable to accept its doctrine, or to think that s. 19 of the Indian Limitation Act has any reference to debts of record, and can be applied to affect the limitation provided by that Act for the execution of decrees. It is, however, unnecessary to discuss the question here. Applying the law as it at present stands ruled, this appeal must be decreed.

(1) I. L. R., 2 All. 443.
(2) I. L. R., 3 All. 247.