

void ; as, if that were so, a *putnidar* who was in default, and whose *putni* had been sold without a complete compliance with the rules, could maintain an action to recover possession of it, on the ground that the sale was no sale at all, and that his estate in the land was not affected by it ; whereas the section says in so many words that in some cases of the kind, at all events, his only remedy shall be by suit for damages and to set aside the sale. I think that such a sale is good and effectual, unless and until it is reversed in a suit properly framed for the purpose, and that until that is done, the title of any person who claims under it is valid against all persons who claim under the alleged defaulter.

The result is that this appeal will be dismissed with costs.

*Appeal dismissed.*

T. A. P.

*Before Mr. Justice O'Kinealy and Mr. Justice Banerjee.*

HAFIZUDDIN CHOWDHRY AND OTHERS (DECREE-HOLDERS) *v.*  
ABDOOL AZIZ (JUDGMENT-DEBTOR).\*

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*Limitation Act (XV of 1877), art. 179, cl. 4—Execution of Decree—Civil Procedure Code (Act XIV of 1882), ss. 365, 366—Succession Certificate Act (VII of 1889), s. 4, cl. (b), art. (iii).*

On the 10th January 1890 the heirs of a deceased decree-holder (who herself had last applied for execution on the 19th March 1887) made an application for execution of a decree asking for the arrest of the judgment-debtor. At the time of this application the heirs had neither taken out a certificate under Act VII of 1889, nor had they applied for substitution of their names on the record. The Munsif directed the applicants to obtain a certificate, and on their failing to do so, he rejected their application for execution on the 21st January 1890. On the 13th September 1890 the heirs having obtained a certificate under Act VII of 1889, but not having substituted their names on the record, applied for execution against the properties of the judgment-debtor. *Held* that the application of the 10th January 1890 was one made in accordance with law, within the meaning of article 179, clause 4 of the Limitation Act, and that therefore the application of the 13th September 1890 was not barred.

\* Appeal from Appellate Order No. 356 of 1891, against the order of J. B. Worgan, Esq., District Judge of Dinajpur, dated the 19th of August 1891, affirming the order of Baboo Nil Madhub Rai, Munsif of Fulbari, dated the 31st of December 1890.

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On the 9th October 1882 one Hyder Ali obtained a decree against one Abdool Aziz, and during her lifetime, in the years 1883, 1885 and 1887, made successive applications for execution of that decree; the last of such application, viz., that of the 19th March 1887, having been struck off for default.

On the 10th January 1890 the heirs of Hyder Ali, without substitution of their names on the record, made a further application for execution of that decree, asking for the arrest of the judgment-debtor, but inasmuch as they had not obtained a certificate under Act VII of 1889, the Court directed them to obtain a certificate, and on the 21st January 1890 (they not having done so) rejected their application for execution. On the 20th May 1890 the heirs of Hyder Ali obtained a certificate under Act VII of 1889, and on the 13th September 1890 made this present application for execution, asking for sale of certain properties belonging to the judgment-debtor.

The judgment-debtor contended that the application was barred, it having been made more than three years from the 19th March 1887, and the application of the 10th January 1890 not being one made in accordance with law, the representatives of Hyder Ali not having at that time obtained a certificate under Act VII of 1889, nor obtained substitution of their names on the record; and further that the representatives of the decree-holder had made no application to restore the execution case after it had been dismissed for default on the 21st January 1890.

The Munsif held that the application of the 10th January 1890 was not a legal one, owing to the heirs not having taken out a certificate, and could not be taken as a proceeding to keep alive the decree.

On appeal the District Judge held that, inasmuch as the representatives of the deceased decree-holder had not applied for substitution of their names on the record, they could not be said to be the holders of the decree, and were not entitled therefore to make the application of the 10th January 1890, referring to the case of *Gunga Pershad Bhoomick v. Debi Sundari Dabea* (1). He therefore dismissed the appeal.

(1) I. L. R., 11 Calc., 227.

The representatives of Hyder Ali appealed to the High Court.

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Dr. *Troylokya Nath Mitter* and Baboo *Tarit Mohun Das* for the appellants contended that the application of the 10th January 1890 was a good one, it having been made by the representative of the deceased decree-holder and in accordance with law, and that it saved the present application from being barred.

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Baboo *Hem Chunder Banerjee* and Baboo *Mokund Nath Roy* for the respondent contended that the application having been dismissed under section 158 of the Civil Procedure Code for default, and no appeal having been made from that order, no fresh application could be made; and that the application of the 10th January 1890 was not one made in accordance with law within the meaning of the Succession Certificate Act and the Limitation Act.

The judgment of the Court (O'KINEALEY and BANERJEE, JJ.) was as follows:—

In this case the decree-holder, a Mahomedan lady, died, leaving as heirs and residuaries ten persons. After her death these ten persons applied for execution of the decree, and the application was registered, but as they were not in a position to file a certificate such as is required by section 4, clause (b) of the Succession Certificate Act, the application was dismissed. That was an application to arrest the debtor. The present application is of a different nature, and it is admitted on all hands that if the former application was such as is contemplated by article 179 of the second schedule of the Limitation Act, the decree-holders are not barred.

The point I think is very easy of decision. Both the Civil Procedure Code and the Limitation Act were passed long before the Succession Certificate Act. Therefore, whatever interpretation may be put on the word "application" as used in the Civil Procedure Code and the Limitation Act, it could in no way depend upon the Succession Certificate Act.

Then it is said that the persons who made the application were not the proper persons to make it. The answer to that is that, when a decree is transferred, as in the present case, by operation of law, the transferee may apply for execution. Here the application was in proper form and made by the heirs of the decree-holder.

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It has been further argued that as the previous application to which I have referred was dismissed by the Munsif under section 158 of the Civil Procedure Code, and that decision was not appealed from, the decree-holder can make no further application. Admitting for the sake of argument, and only for the sake of argument, that the order rejecting the previous application was made under section 158, still it is quite clear that the relief asked for in that application was different from what is asked for here, and consequently the decree-holders are not debarred from making the present application.

The result is that the decisions of the lower Courts must be set aside and the appeal allowed with costs.

*Appeal allowed.*

T. A. P.

*Before Mr. Justice O'Kinealy and Mr. Justice Ameer Ali.*

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 June 25.

RAM CHANDRA DUTT AND ANOTHER (DEFENDANTS) v. JOGES-  
 WAR NARAIN DEO (PLAINTIFF).\*

*Evidence Act I of 1872, s. 32, cl. 5—Statement of deceased relatives—  
 Hearsay Evidence—Birth, date of.*

For the purpose of the decision of a question of limitation, it was necessary to prove the date of the plaintiff's birth. The plaintiff and one of his witnesses each spoke to statements made to them by relatives of the plaintiff who were since deceased, relating to the date of the plaintiff's birth, *Held* that such statements were admissible in evidence under s. 32, cl. 5 of the Evidence Act.

*Haines v. Guthrie* (1) not followed.

THE plaintiff sued for construction of a will and a declaration that the defendant Rani Doorga Coomari had no power to alienate certain properties except to the extent of her maintenance, and asked for possession of those properties or a portion of them against the defendants, the Duttas, who held them in *putni* from Rani Doorga Coomari.

\* Appeal from Original Decree No. 23 of 1892, from the decision of Baboo Jagabandhu Gangooly, the Subordinate Judge of Midnapore, dated the 1st October 1891.

(1) L. R., 13 Q. B. D., 818.