

APPELLATE CIVIL.

Before Sir Louis Stuart, Kt., Chief Judge, and Mr. Justice Muhammad Raza.

RAM LAL (DECREE-HOLDER-APPELLANT) *v.* UDIT NARAIN SINGH (JUDGEMENT-DEBTOR-RESPONDENT).*

1927
February, 4.

Execution of decree—Limitation Act (IX of 1908), Article 182, clause 5—Oral application for execution of decree by attachment of the property, whether a step in aid of execution.

Where the decree-holder applied to the executing court to substitute the names of certain persons as legal representatives of the judgment-debtor, who had died, and to attach and bring to sale certain property of the deceased judgment-debtor in their possession in satisfaction of his decree and, after the names of the legal representatives had been brought on the record, put in an oral application that a warrant of attachment should issue against the property, *held* that the oral application was an application in accordance with law which asked the court to aid the decree-holder in executing his decree in a particular way by taking a certain step and fulfilled the conditions laid down in Article 182, clause 5 of the first schedule of Act IX of 1908.

Mr. *S. N. Roy*, for the appellant.

Mr. *Radha Krishna*, for the respondent.

STUART, C. J., and RAZA, J.:—It is necessary to state the following facts only in order to explain the question before the Court in this appeal. Ram Lal had obtained a decree for possession of immovable property, costs and damages against Mahesh Bakhsh Singh. He obtained possession over the immovable property. Mahesh Bakhsh Singh died. On the 16th of March, 1922 Ram Lal applied to the court in charge of executing the decree to substitute the names of Udit

* Execution Decree Appeal No. 53 of 1926, against the decree of Mahmud Hasan, First Subordinate Judge of Bahraich, dated the 24th of August, 1926 confirming the decree of Shiva Charan, Munsif, Qaisarganj at Bahraich, dated the 13th of May, 1926, dismissing the appellant's application for execution.

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Narain and Sat Chandi Singh, sons of Mahesh Bakhsh Singh, as judgment-debtors, and to attach and bring to sale certain property of Mahesh Bakhsh Singh in their possession in satisfaction of the amount due for damages and costs. Notices were issued to Udit Narain Singh and Sat Chandi Singh, but no orders were passed upon the application. On the 8th of August, 1922 the names of Udit Narain Singh and Sat Chandi Singh were brought upon the record as judgment-debtors in place of the name of Mahesh Bakhsh Singh, but no further order was passed. The decree-holder then put in an oral application that a warrant of attachment should issue against the property. If this application be considered as an application made in accordance with law to the proper court to take a step in aid of execution, the present application to execute the decree is not time-barred; but if this application be not considered such an application, the present application is time-barred. In order to decide the point it is necessary to consider whether the application fulfils the conditions laid down in Article 182, clause 5 of the first schedule of Act IX of 1908. It was an oral application, but it was clearly an application in accordance with law. It was made to the proper court. It asked the court to do what it had not done already, that is to say, to issue a warrant of attachment and sale of certain property in order that the decretal amount might be satisfied from the sale-proceeds. It thus asked the court to aid the decree-holder in executing his decree, and it asked the court to do this in a particular way by taking a certain step. The courts below have, however, held that this application does not fail within these conditions and they have dismissed the present application as time-barred. In our opinion in considering the meaning of the 5th clause of Article 182 a court

should look very closely at the words used in the clause and should be loath to look at anything else. We see no justification for saying that an application, which need not necessarily have been made, is not an application in accordance with law, or for imposing conditions which the statute has not imposed. In our opinion it cannot be suggested that this application was other than in accordance with law. We do not even find that it was an unnecessary application. There is, however, nothing in the section which would justify the conclusion that an application which is not strictly necessary is an application which is not in accordance with law. We, therefore, consider that this application fulfilled the necessary conditions; and in these circumstances the present application was within time. We, therefore, allow this appeal and hold that the application of the 7th of August, 1925 for execution was within time. The judgment-debtors will pay their own costs and those of the decree-holder in all courts.

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Appeal allowed.

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Before Mr. Justice Wazir Hasan and Mr. Justice C. M. King.

RAM SHANKAR (DEFENDANT-APPELLANT) v. MANDAN-
KANI PRASAD AND OTHERS (PLAINTIFFS-RESPONDENTS).*

1927
February, 4.

Jurisdiction of civil and revenue courts—Civil courts' jurisdiction to partition of agricultural holding between tenants in common—United Provinces Land Revenue Act (III of 1901), section 39, sub-section (2), meaning of.

Held, that a civil court has jurisdiction to grant a decree for the partition of an agricultural holding between tenants in common.

* Second Civil Appeal No. 20 of 1926, against the decree of Aparkash Chandra Bose, District Judge of Rae Bareilly, dated the 6th of October, 1925, dismissing the appeal of the appellant and thus confirming the decree dated the 29th of November, 1924 of Mirza Mohammad Munim Bakht, Additional Subordinate Judge of Rae Bareilly, decreeing the plaintiff's claim.