

properly decreed against the defendant No. 1 (appellant).

We dismiss the appeal with costs. The decree of the lower appellate court is confirmed in all respects.

Appeal dismissed.

1926

DHANPAT
RAE
v.
ALLAHABAD
BANK,
LTD.,
LUCKNOW.

APPELLATE CIVIL.

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

GAURI SHANKAR (DECREE-HOLDER-APPELLANT) v. KUNWAR JANG BAHADUR (JUDGMENT-DEBTOR-RESPONDENT).*

1926
May, 13.

Civil Procedure Code (V of 1908), order 21, rule 15—Execution of decree—Partial execution of decree, permissibility of.

Held, that it is not open to a decree-holder to apply for partial execution of a decree.

Where a decree is in favour of two persons, an application by one of them for execution of only half of the decretal amount is not a good application and cannot be given effect to. *Ram Autar v. Ajudhia Singh* (1), *Collector of Shahjahanpur v. Surjan Singh* (2), and *Banarsi Das v. Maharani Kuar* (3), followed.

Mr. *Zahur Ahmad*, for the appellant.

Mr. *M. Wasim*, for the respondent.

STUART, C. J., and RAZA, J. :—This is an appeal against a decision of the learned Subordinate Judge of Hardoi rejecting an application for execution of decree as barred by limitation. The decree was originally in favour of certain Sri Kishan who died in 1917. The names of Gauri Shankar and Ram Sahai were substituted for his name as decree-holders. Ram Sahai applied on the 2nd of May, 1922, for

* Execution of Decree Appeal No. 12 of 1926, against the order of Saiyid Khursh'ed Husain, Subordinate Judge of Hardoi, dated the 22nd of January, 1926

(1) (1879) I.L.R., 1 All., 281. (2) (1882) I.L.R., 4 All., 72
(3) (1883) I.L.R., 5 All., 27.

1926

GAURI
SHANKAR
v.
KUNWAR
JANG
BAHADUR.

Suart, C. J.,
and Raza, J.

execution of only half of the decretal amount. There is a series of decisions of the Allahabad High Court which lay down that under the old law which has not been altered in this particular, it is not open to apply for a partial execution. These decisions are contained in *Ram Autar v. Ajudhia Singh* (1), *Collector of Shahjahanpur v. Surjan Singh* (2), and *Banarsi Das v. Maharani Kuar* (3). At page 31 of the last named decision are quoted certain remarks of PEACOCK, C. J., in an older Calcutta case in which the learned Chief Justice gave at length the reasons for the rule. We are of opinion that the rule, as stated in these decisions, is stated correctly and is in effect the rule laid down in order 21, rule 15 of the present Code of Civil Procedure; and so we have no doubt as to the fact that the application of the 2nd of May, 1922 was not a good application and that it could not be given effect to. As a matter of fact it was not given effect to for, although an order of attachment was issued under it, the order of attachment was without result as no property was found to attach. On the 25th of July, 1922, Gauri Shankar asked to be made a party to execution, but not to be made a party to the previous application. He asked that execution should issue for the whole decree, but did not explain in what way he wished to execute the decree. The Court laid down that the decree could not be executed partially and dismissed the whole proceedings declaring that Gauri Shankar should be made a party in all future proceedings which should be for the execution of the whole decretal amount. We have not been able to find any effective application afterwards until the application which the learned Subordinate Judge has now dismissed of the 21st of April, 1925. We consider that the learned

(1) (1879) I.L.R., 1 All., 231.

(2) (1882) I.L.R., 4 All., 72.

(3) (1888) I.L.R., 6 All., 27.

Subordinate Judge has applied the correct law to the subject. We do not consider that there has been in this matter any application which can be construed under the provisions of article 182, clause 5 of Act IX of 1908, as an application in accordance with law to the proper court for execution within three years of the period of the last application, nor can we find that there has been any step in aid of execution. In these circumstances we consider that the learned Subordinate Judge arrived at a correct conclusion and dismiss this appeal with costs.

1926

GAURI
SHANKAR
v.
KUNWAR
JANG
BAHADUR.

Stuart, C. J.,
and Raza, J.

Appeal dismissed.

MISCELLANEOUS CIVIL.

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

LALA DAMODAR DAS (APPELLANT) v. SHEIKH HAMID-
UL RAHMAN (RESPONDENT).*

1926

July, 30.

Provincial Insolvency Act (V of 1920), section 33—Proving of debts after they had become time-barred, whether could be allowed.

A person was adjudged insolvent, but none of the creditors formally proved their debts within the time fixed as according to them they knew that the insolvent had no assets and no dividend was likely to be declared. He, however, remained insolvent and undischarged, and several years afterwards when he succeeded to some property certain creditors applied to prove their debts formally.

Held, that though their claims had, on the date when they proposed to prove them, become time-barred, but as those debts were within time on the date of adjudication they can be proved. *Sivasurbramania Pillai v. Theethiappa Pillai* (1), followed.

* Miscellaneous Appeals Nos. 11 and 14 of 1926, against the order, dated the 7th of December, 1925, of J. R. Cumming, 4th Additional District Judge of Lucknow, dismissing the application for proof of debt and granting absolute discharge.

(1) (1924) I.L.R., 47 Mad., 120.