

APPELLATE CIVIL.

Before Mr. Justice Bisheshwar Nath Srivastava.

1929
October, 23.

DRIGBIJAY SINGH AND ANOTHER (JUDGMENT-DEBTOR-OBJECTOR-APPELLANTS) v. BHAGWAN DASS (DECREE-HOLDER-RESPONDENT).*

Execution of decree—Execution application containing all necessary particulars but not accompanied with process fee, if defective—Courts erroneous order returning application, effect of—Civil Procedure Code (Act V of 1908), order XXI, rules 11 to 14 and 17—Oudh Chief Court Rules, rule 78—Res Judicata—Objection that an execution application was time-barred rejected by court—Same objection raised on a subsequent application for execution, if barred by the principle of Res judicata.

Where an application for execution which contained all the particulars laid down in rules 11 to 14 of order XXI of the Code of Civil Procedure, was presented on the last day of limitation but was returned by the court because process fee did not accompany it and it was filed next day with the necessary process fee, *held*, that there was no rule of law contained in the Code of Civil Procedure or any of the rules framed by the Oudh Chief Court which makes it obligatory for a decree-holder to file process fee with his application for execution, the first presentation of the application was, therefore, not defective in any way but was quite valid and the erroneous order of the court directing its return could not invalidate its presentation which was valid in all respects.

On an application for execution the judgment debtor raised an objection that it was time barred and there was an adjudication by the court which held that the objection was without force. There was no appeal against that order and it became final between the parties. The same objection was again raised on a subsequent application for execution. *Held*, that the question having been once raised and decided between the parties the objection was barred by the principle of *res judicata*.

Mr. Bhawani Shankar, for the appellants.

*Execution of Decree Appeal No. 30 of 1929, against the decree of Pandit Tika Ram Misra, Subordinate Judge of Mohanlalganj, Lucknow, dated the 19th of April, 1929, upholding the decree of Syed Yaqub Ali, Munsif, North, Lucknow, dated the 19th of January, 1929.

Mr. *Haider Husain* for the respondent.

SRIVASTAVA, J. :—This is an appeal by the judgment-debtors.

The relevant facts are that on the 7th of November, 1913, the decree-holder respondent obtained a preliminary decree for sale against the judgment-debtors-appellants. This decree was made final on the 21st of August, 1915. Various applications for execution were made during the years 1917, 1919, and 1921 but they are material for the purposes of this appeal. On the 31st of May, 1924, the decree-holder made his fourth application for execution and on the 23rd of March, 1925, the judgment-debtors made an objection on the ground that the application in question was barred by limitation. This objection was overruled. Another application was made in 1926, but it was also consigned to records. Ultimately the sixth application which has given rise to the present appeal was made on the 22nd of August, 1927. It was returned because the process fee did not accompany it. It was filed again the next day namely on the 23rd of August 1927.

The judgment-debtors objected on two grounds : (1) that the application was barred by the twelve years rule under section 48 of the Civil Procedure Code and (2) that the present application was not maintainable by reason of the 4th application for execution dated the 31st of May, 1924, having been barred by time. These objections have been overruled by the courts below. The same objections have been pressed before me in support of this appeal.

The period of twelve years from the date of the final decree expired on the 21st of August, 1927. Admittedly the 21st of August, 1927, was a public holiday. Therefore the application presented on the 22nd of August, 1927 was under the provisions of section 4 of the Indian Limitation Act (IX of 1908) within time. Order XXI,

1929

DRIGBIJAY
SINGH
v.
BHAGWAN
DASS.

1929

DRIGBIJAX
SINGH
v.
BHAGWAN
DASS.

Srivastava, J.

rules 11 to 14 lay down the requirements for a valid application for execution. Order XXI, rule 17 sub-rule 1) as amended by the Oudh Chief Court provides that if any of those requirements "have not been complied with, the court may allow the defect to be remedied then and there or may fix a time within which it may be remedied and in case the decree-holder fails to remedy the defects within such time, the court may reject the application." Sub-rule (2) of this rule provides that "where an application is amended under the provisions of sub-rule (1) it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented." Thus it will appear that if an application for execution is returned to the decree-holder to allow him to remedy any defects in the application, then in such a case the amendment takes effect retrospectively and dates back to the date when the application was first presented. I am not aware of any rule of law contained in the Code of Civil Procedure or any of the rules framed by the Oudh Chief Court, and I have not been referred to any such rule by the learned counsel for the appellants, which might make it obligatory for the decree-holder to file the process fee with his application for execution. All that I find in the Oudh Civil Rules is that rule 178 provides that "the execution application may, if the decree-holder so desires be accompanied by all the fees payable for the several steps in execution at different stages of the execution proceedings." I am therefore of opinion that the application for execution as it was presented on the 22nd of August, 1927, was not in any way defective and the order passed by the learned Munsif directing the return of the application was a mistaken order. The proper course for the learned Munsif to adopt was to order the decree-holder to file the requisite process fee within a reasonable time and not to have returned the application by reason of its not being accompanied with the process fee. As it is

the decree holder complied with the order passed by the learned Munsif and filed the application with the necessary process fee at the earliest possible opportunity, namely, on the day following the Munsif's order. The question therefore arises, whether under the circumstances the decree-holder is to suffer for the mistake of the court and whether he is, by reason of the process fee not having been affixed to the application at the time when it was presented, to be placed in a worse position than he would have been in case the application had been defective in the matter of any of the particulars laid down in rules 11 to 14 of order XXI of the Code of Civil Procedure. I think the answer is obvious. It is a well recognized principle that "an act of the Court shall prejudice no man." Further the application as it was presented on the 22nd of August, 1927 not being defective in any way its presentation to the court on the 22nd of August must be considered to be a valid presentation. The erroneous order of the court directing its return cannot invalidate this presentation which was valid in all respects. I am therefore in agreement with the courts below that the application must be deemed to have been an application in accordance with law and presented on the 22nd of August, 1927, which is the date of its first presentation. It follows that the application was not barred by the twelve years rule, and the objection based on that ground must be overruled.

As regards the second objection it would be sufficient to say that the judgment-debtors on the 23rd of March, 1925, raised an objection on the ground of limitation against the application for execution dated the 31st of May, 1924. There was an adjudication by the court in respect of the objection and it was held that the objection was without force. There was no appeal against this order and it became final between the parties. The question having once been raised and decided between the parties, the present objection is barred by the principal of *res judicata*.

1929

DRIGBIJAY
SINGH
v.
FHAQWAN
DASS.

Srivastava, J.

1929

DRIGBIJAY
SINGH
v.
BHAGWAN
DASS.

The appeal is therefore without force and must fail.
It is accordingly dismissed with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Sir Louis Stuart, Knight, Chief Judge.

1929
October, 21.

LALA NIHAL CHAND AND OTHERS (APPELLANTS) v. LALA
JAI RAM DASS (COMPLAINANT-RESPONDENT).*

Criminal Procedure Code (Act V of 1898), section 145(1), (2) and (8)—Magistrate dealing with dispute in respect of a sugar factory under section 145(1) and (2) of the Code of Criminal Procedure—Molasses produced by sugar mill, if to be treated as 'produce' within the meaning of section 145(8)—'Produce' under section 145(8) of the Code of Criminal Procedure, if to be confined to what is grown from the ground—Jurisdiction of Magistrate under section 145(1) and (2) to deal with molasses produced from sugar factory.

The word "produce" in section 145(8) of the Code of Criminal Procedure is not necessarily confined to what is grown from the ground but refers also to a finished article or a semi-finished article made from raw material and molasses produced by sugar mill can fairly be treated as the produce of the mill.

Where, therefore, a Magistrate was dealing with a dispute in respect of land within the meaning of section 145(1) and (2) of the Code of Criminal Procedure and the land consisted of the factory buildings of a sugar mill including certain vats containing molasses he had jurisdiction to take action in respect of the molasses in the vats and as the molasses produce was subject to speedy and natural decay he was justified in ordering its sale and for the proper disposal of the sale proceeds.

Mr. St. G. Jackson, for the applicant.

Messrs. G. H. Thomas and R. P. Varma, for the opposite party.

STUART, J. C. :—The facts are stated in the order of reference. I need only summarise them. The proceedings were under section 145 of the Code of Criminal

*Criminal Reference No. 51 of 1929.