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rent obtained in Oudh. The case of *Debi Prashad v. Mahendar Singh* (1) referred to above is also based on the Agra Tenancy Acts of 1881 and 1901. Section 145 of the Oudh Rent Act clearly provides that a process of execution shall not be issued on a decree under the Act, when the application for the issue of *the* process is made after the lapse of *three years* from the date of the decree unless the decree is for a sum exceeding Rs.500. It cannot be denied that if the amendment desired by the appellant be allowed, a fresh process will have to be issued now for the attachment of the trees of plots Nos. 273A and 273B but this cannot be allowed under section 145 of the Oudh Rent Act as the amount of the decree in this case is below Rs.500. If any authority were needed for this view, it is contained in the case of *Mohamed Sadik v. Tika Ram* (2).

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I am therefore of opinion that the order of the learned District Judge was perfectly right. The appeal is therefore dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL

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Before Mr. Justice G. H. Thomas and Mr. Justice H. G. Smith
SAHAI LAL AND OTHERS (APPELLANTS) v. DEPUTY COMMISSIONER, MANAGER, COURT OF WARDS, BASAIDIH, TIKRA (RESPONDENT).*

Oudh Rent Act (XXII of 1886), section 145—Limitation Act (IX of 1908), Article 182—Separate liability of each judgment-debtor for less than Rs.500 but total amount of decree more than Rs.500, section 145, Oudh Rent Act, applicability of—Application for transfer of decree to another district against some judgment-debtors only—Limitation is saved against those judgment-debtors only and not against all.

An application for execution made more than 3 years after the date of the decree is not barred by the special provisions

*Execution of Decree Appeal No. 57 of 1933, against the order of Chaudhri Akbar Husain, I.C.S., District Judge of Sitapur, dated the 19th of May, 1933, confirming the order of Thakur Raja Ram Singh, Assistant Collector, 1st class, Kheri, dated the 28th of November, 1932.

(1) (1904) Select Case No. 1.

(2) (1911) 9 I.C., 240 (Oudh).

as to limitation of section 145 of the Oudh Rent Act where the total amount of the decree is for over Rs.500 but the individual liability of the various judgment-debtors is for a sum less than Rs.500. What has to be looked at for the purposes of section 145 is the total amount which the decree involves even where the decree determines the liabilities of judgment-debtors *inter se* for lesser amounts. *Zakaullah Khan v. Musammatt Gulkandi* (1), relied on.

An application for transfer of a decree as regards some of the judgment-debtors to another district is an application to the Court to take a step-in-aid of execution within the meaning of Article 182 of the first schedule of the Limitation Act. It, however, saves limitation only as against those judgment-debtors in respect of whom the decree is sought to be transferred for execution to another district and not as against the other judgment-debtors. Therefore an application for execution made more than three years after the date of the decree against judgment-debtors other than those against whom the decree was sought to be transferred is time-barred by reason of the ordinary provisions relating to the execution of decrees and not by reason of the special provisions contained in the earlier portion of section 145, Oudh Rent Act. *Shanda Dutt Ram v. M. Moham-mad Asghar* (2), referred to.

Mr. *Moti Lal Tilhari*, for the appellants.

The Assistant Government Advocate (Mr. *H. K. Ghosh*) for the respondent.

THOMAS and SMITH, JJ.:—This is an appeal against an order dated the 19th of May, 1933, of the learned District Judge of Sitapur, by which he dismissed an appeal from an order dated the 28th of November, 1932, of an Assistant Collector of the first class of the Kheri District.

The Court of Wards as manager of the Basaidih Tikra Estate obtained a decree on the 9th of July, 1929, for arrears of revenue against a number of parties. The decree was for a total sum of Rs.1,842-10-6, but the individual liability of the various judgment-debtors was specified in the decree. On the 12th of September, 1930, an application was made to the Court which passed the decree for its transfer to the Sub-Divisional Officer of the Misrikh sub-division of the Sitapur District for execution as against four of the judgment-debtors. That

(1) (1927) I.L.R., 3 Luck., 366. (2) (1933) 10 O.W.N., 363.

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application included a prayer that notice should be given to the remaining judgment-debtors. It appears that the decree as against the four judgment-debtors in question was, in fact, transferred to the Sitapur District for execution, and the final order consigning the application to the record-room was passed on the 15th of November, 1930. No notice appears to have been issued to any other judgment-debtor. Afterwards, on the 20th of August, 1932, an execution application was made as against several other judgment-debtors, some of whom raised objections. Their objections were dismissed by the Assistant Collector, and their appeal to the learned District Judge was also dismissed. They have now come here with this present appeal.

The first contention is that the present application for execution was made more than three years from the date of the decree, and was, therefore, barred by the special provisions as to limitation of section 145 of the Oudh Rent Act, since the separate liability of each of the objectors is for a sum of less than Rs.500. There is admittedly, however, a ruling of this Court *Zakaullah Khan v. Gulkandi, Musammat, and others* (1) in which it was held that what has to be looked at for the purposes of section 145 of the Oudh Rent Act is the total amount which the decree involves, even where the decree determines the liabilities of judgment-debtors *inter se* for lesser amounts. We are not shown that this view has ever been dissented from, and we accordingly take the view that the present application for execution is not barred by the special provisions as to limitation of section 145 of the Oudh Rent Act.

It remains to consider, however, whether the application is barred otherwise, as having been made more than three years after the date of the decree. It is "*prima facie*" barred, unless limitation is saved in some way. It is suggested for the decree-holder that it is saved in the present case by the application of the 12th of Sep-

(1) (1927) I.L.R. 3 Luck., 366.

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tember, 1930, for the transfer of the decree as regards four of the judgment-debtors to the Sitapur District. That application, it cannot be seriously doubted, was an application to the Court to take a step-in-aid of execution within the meaning of Article 182 of the first Schedule of the Limitation Act. We may refer on that point to the case of *Shanda Dutt Ram, Babu v. Mahomed Asghar, Mirza, and another* (1). The question, however, is whether, in the circumstances, that application saves limitation only as against the four judgment-debtors in respect of whom the decree was sought to be transferred for execution to the Sitapur District, or whether it saves limitation as regards all the judgment-debtors. The second portion of explanation 1 in respect of Article 182, contained under the heading "time from which period begins to run", reads as follows:

"Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But, where the decree or order has been passed jointly against more persons than one, the application, if made against anyone or more of them, or against his or their representatives, shall take effect against them all.

We think it is clear that the present decree was of the nature described in the first paragraph of this explanation. The question is whether the application of the 12th of September, 1930, can be said to have been made against any other judgment-debtor except the four we have referred to above. Those four, it should be mentioned, are not amongst the present objectors. The only manner in which the application of the 12th of September, 1930, can be said to have been made against the present objectors is that, as has been mentioned already, the application contained a prayer that notice should be

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given to the other judgment-debtors. It is not clear what kind of notice was in the mind of the applicant when that prayer was inserted in the application. It is contended on behalf of these present objectors that no notice was legally necessary to be given to them in respect of the application for the transfer of the decree for execution as regards four of the judgment-debtors to the Sitapur District, nor, having regard to the provisions of Order XXI, rule 22(1)(a) of the Code of Civil Procedure, was notice legally necessary to the other judgment-debtors as regards the payment by them of their own portions of the liability. It is therefore contended that as regards the rest of the judgment-debtors there cannot be said to have been any application made in accordance with law to the proper Court for execution, or to take any step-in-aid of execution of the decree concerned, (*vide* paragraph 5 of the provisions in respect of Article 182 of the first Schedule of the Limitation Act, in the column headed "time from which period begins to run"). As has been said already, whatever the nature of the notices may have been that the application prayed should be given to the other judgment-debtors, no notices of any kind were, in fact, sent to them. We are of opinion that it cannot be said that the application of the 12th of September, 1930, constituted an application in accordance with law to the proper Court, as regards the present objectors, for execution, or to take any step-in-aid of execution of the decree. We accordingly think that as regards these objectors the application of the 20th of August, 1932, was time-barred, as being made more than three years after the date of the decree. It is so time-barred by reason of the ordinary provisions relating to the execution of decree, and not by reason of the special provisions contained in the earlier portion of section 145 of the Oudh Rent Act.

We accordingly allow this appeal, and hold that the decree can no longer be executed against the objectors-appellants. They are allowed their costs in all the three courts.

Appeal allowed.