

APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan

1934
September,
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THAKUR LALJI SINGH (DECREE-HOLDER-APPELLANT) v.
CHHOTKAU AND ANOTHER (JUDGMENT-DEBTORS-RESPONDENTS)*

Oudh Rent Act (XXII of 1886), section 145—Decree for less than Rs.500—Execution application attaching certain property—Application for amendment of execution application made after lapse of 3 years requiring issue of fresh process, whether barred by section 145.

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. *Mohammad Sadiq v. Tika Ram* (1), relied on, *Gnanendra Kumar Roy Choudhry v. Rishendra Kumar Roy Choudhry* (2), *Mohini Mohan Sirkar v. Navadwip Chandra Biswas* (3), *Naurangi Lal Marwari v. Charubala Dusee* (4), and *Debi Pershad v. Mahendra Singh* (5), referred to and distinguished.

Where therefore an application for execution of a decree for arrears of rent for less than Rs.500 is made within three years of the date of the decree but an application for amendment of the execution application involving the issue of a fresh process is made after the lapse of 3 years from the date of the decree, the amendment cannot be allowed under section 145 of the Oudh Rent Act.

Mr. G. P. Bajpai, for the appellant.

Mr. Azizuddin, for the respondents.

ZIAUL HASAN, J.:—This is an execution of decree appeal against an order of the learned District Judge of Hardoi, dated the 26th of August, 1933.

The plaintiff, who is the appellant in this Court, obtained a decree for arrears of rent against the respondents for a sum of Rs.167-11-0, on the 10th of Novem-

*Execution of Decree Appeal No. 69 of 1933, against the order of S. Ali Hamid, District Judge of Hardoi, dated the 26th of August, 1933, reversing the order of R. B. Babu Mohan Lal, Honorary Assistant Collector, 1st class, Hardoi, dated the 30th of April, 1933.

(1) (1911) 9 I.C., 240.

(2) (1918) 22 C.W.N., 540.

(3) (1918) 47 I.C., 911.

(4) (1932) 1.L.R., 59 Cal., 1266.

(5) (1904) Select Case No. 1.

ber, 1929. An application for execution was put in in 1929 but it was infructuous. A second application was made on the 15th of August, 1932 in which it was prayed that the decretal amount might be realized by the sale of trees in grove No. 260. The trees were accordingly attached but on the 17th of February, 1933, the decree-holder appellant applied for amendment of his application for execution and prayed that trees of plots Nos. 273A and 273B should be attached instead of those on plot No. 263. The Court of first instance allowed this amendment and ordered attachment of the trees of plots Nos. 273A and 273B. The judgment-debtors-respondents brought an objection against this order but the objection was dismissed. The respondents then appealed to the District Judge and the latter was of opinion that the decree-holder-appellant could not be allowed to amend his decree in view of the provisions of section 145 of the Oudh Rent Act, after a period of three years from the date of the decree, the decretal amount being less than Rs.500. The learned District Judge therefore set aside the first Court's order and ordered that the trees of plot No. 263 should be sold in execution of the present appellant's decree.

The decree-holder has appealed against this order and the question is whether or not the first Court was right in allowing amendment of the application for execution on the 17th of February, 1933.

The learned counsel for the appellant has relied on the cases of *Gnanendra Kumar Roy Choudhry v. Rishendra Kumar Roy Choudhry* (1), *Mohini Mohan Sirkar v. Navadwip Chandra Biswas* (2) and *Naurangi Lal Marwari v. Charubala Dasee* (3) and also on a decision of the Board of Revenue in *Debi Prashad v. Mahendar Singh* (4). I am however of opinion that none of these cases applies to the present case for the simple reason that they do not deal with a decree for arrears of

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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.

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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).