

Under these circumstances we must allow the appeal, set aside the decree of the lower Courts, and dismiss the suit with costs throughout.

A. A. C.

Appeal decreed.

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 RAM
 CHUNDER
 SARDHU
 KHAN
 v.
 SAMIR GAZI.

Before Mr. Justice Prinsep and Mr. Justice Banerjee.

RAJBULLUBH SAHAI (DECREE-HOLDER) v. JOY KISHEN PERSHAD
alias JOY LAL (JUDGMENT-DEBTOR) AND KHOOB LAL (OBJECTOR).*

1892

 July 29.

*Limitation—Execution of decree—Application for transmission of decree—
 Step in aid of execution—Proceedings bonâ fide in Court without
 jurisdiction—Limitation Act (XV of 1877), sec. 14, para. 3.*

On the 2nd March 1887, *S* obtained a mortgage decree against *P* in the Court of the Munsiff of Hajipore. On the 9th September 1887, *S* applied for execution, and on the 7th November 1887 the mortgage property was sold by the Hajipore Court. On appeal, on the 2nd September 1890, the High Court set aside the sale on the ground of want of jurisdiction. Thereupon, on the 6th September 1890 *S* applied to the Hajipore Court to transfer the decree for execution to the Munsiff's Court at Muzaffarpur. On the 19th December 1890 *S* applied for execution to the Muzaffarpur Court. *L*, who had meanwhile purchased the mortgaged property from *P*, objected that the application was barred.

Held, that the application was not barred, as the application of the 6th September 1890 was a step in aid of execution, and also as section 14, para. 3 of the Limitation Act, clearly applied to the facts of the case, and under it the decree-holder was entitled to a deduction of all the time occupied in executing the decree in the Court having no jurisdiction, the application having been manifestly made in good faith.

Nilmony Singh Deo v. Biressur Banerjee (1) distinguished.

Latchman Pundeh v. Maddan Mohun Shye (2) referred to.

On the 2nd March 1887, Rajbullubh Sahai obtained a mortgage decree against Lala Joy Kishen Pershad in the Court of the Munsiff of Hajipore. The decree directed that if the

* Appeal from order No. 293 of 1891, against the order of B. G. Geidt, Esq., District Judge of Tirhut, dated the 22nd of July 1891, reversing the order of Babu Bepin Behary Ghose, Munsiff of Muzaffarpur, dated the 23rd of May 1891.

1892 mortgage money were not paid by the 2nd September 1887, the mortgaged property should be sold. On the 9th September 1887, the decree-holder applied to the Munsiff of Hajipore for execution, and the mortgaged property was sold on the 7th November 1887. On appeal the High Court set aside the sale on the 2nd September 1890, on the ground that Munsiff's Court at Hajipore had no jurisdiction. The decree-holder then applied on the 6th September 1890 to the Hajipore Court to transfer the decree for execution to the Court of the Munsiff at Muzaffarpur, and on the 19th December 1890 made his present application for execution to the Muzaffarpur Court. The respondent Khoob Lal, who had meanwhile purchased the mortgaged property from the judgment-debtor, Lala Joy Kishen, objected that the application was barred. The Munsiff held that the application of the 6th September 1890 was a step in aid of execution, and, having been made within three years from the application of the 9th September 1887, was within time. He also held that the decree-holder was entitled under the Law of Limitation to deduct all the time from the 9th September 1887 to the 2nd September 1890, if not to the 6th September 1890, in computing the period of limitation. He therefore disallowed the objection and ordered execution to issue.

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On appeal, the District Judge held on the authority of the case of *Nilmony Singh Deo v. Biresur Banerjee* (1) that the application for transfer of the 6th September 1890 was not a step in aid of execution, and that the application of the 19th December 1890 would be out of time, even if the period from the 9th September 1887 to the 7th November 1887, the date of the sale, were deducted, as having been spent *bonâ fide* in making another application for the same relief which the Court for want of jurisdiction could not entertain. He therefore reversed the order of the Munsiff and dismissed the application for execution.

The decree-holder appealed to the High Court.

Baboo *Abinash Chunder Banerjee*, Baboo *Jogesh Chunder Dey*, and Baboo *Sâtish Chunder Ghose* for the appellants.

Baboo *Mahabeer Singh* for the respondents.

(1) I. L. R., 16 Calc., 744.

The Court (PRINSEP and BANERJEE, JJ.) delivered the following judgment:—

It has been held by the District Judge in appeal that execution of the decree in this case is barred by limitation.

It would seem that execution of this decree was deferred until the 2nd of September 1887, time having been granted to the judgment-debtor up to that date. The decree-holder applied for execution on the 9th September 1887 by sale of the mortgaged property by the Court of the Munsiff of Hajipore. The sale was accordingly held; but on appeal to the High Court it was held on the 2nd September 1890 that the Hajipore Court had no jurisdiction. The decree-holder then applied on the 6th September 1890 to the Hajipore Court, which was the Court which passed the original decree, to transfer it for execution to the Court having jurisdiction. Application to execute this decree was next made on the 19th December 1890 to the Court of Muzaffarpur.

On these facts the District Judge has held that execution is barred by limitation. He has calculated the period from the 9th September 1887 as most favourable to the decree-holder for a starting point in calculating the period of limitation, and he has next found that the application for execution being made on the 19th December 1890, was made after the period of three years allowed by the law, and was barred. The Munsiff whose judgment was under appeal had held that the application made by the decree-holder on the 6th September 1890 to the Court which passed the decree to transfer it for execution to the Court which had jurisdiction to hold the sale was an application within the terms of the law of limitation, and was a step taken in aid of execution of the decree, and that consequently execution of the decree was not barred by limitation. The District Judge on appeal set aside this order on the authority of the case of *Nilmony Singh Deo v. Biresur Banerjee* (1).

We think that the District Judge has misapplied this case, which relates to an entirely different matter. It was there held that the application to transfer the decree for execution to another Court was not an application to execute the decree. But it was

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1892 not held in that case, nor was it any part of that case, that it was not an application amounting to some step taken in aid of execution of the decree. Consequently, that case is no authority for the order passed by the District Judge. There are cases on the other hand in which an application for the transfer of a decree for the purpose of execution has been considered to be a step in aid of the execution [see the cases of *Latchman Pundeh v. Maddan Mohun Shye* (1), *Collins v. Maula Baksh* (2), and *Krishnagayyar v. Venkayyar* (3)].*

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We would also observe that under any circumstances the execution of the decree in this case was not barred by limitation, for the case clearly comes within section 14, para. 3 of the Law of Limitation, and the decree-holder is entitled to a deduction of all the time occupied in executing the decree in the Court having no jurisdiction, it being manifest that such application was made in good faith to the Court, which only in second appeal to this Court was found not to have jurisdiction. The order of the first Court must therefore be restored, and the appellant will be entitled to his costs in this Court and also in the lower Appellate Court.

Appeal allowed.

C. D. P.

*Before Sir W. Comer Petheram, Knight, Chief Justice, and
Mr. Justice Ghose.*

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August 1.

RAM DOYAL BANERJEE (DECREE-HOLDER) v. RAM HARI
PAL (JUDGMENT-DEBTOR).†

Civil Procedure Code (Act XIV of 1852), ss. 244(c), 257A, 258—Adjustment of decree out of Court—Instalment bond.

A kistbundi or instalment bond was executed by way of adjustment of a decree, but this was not certified to the Court in accordance with the provisions of sections 257A and 258 of the Code of Civil Procedure: *Held*

* See also the case of *Vellaya v. Jaganatha*, I. L. R., 7 Mad., 307—*Ed. Note*.

† Appeal from order No. 329 of 1891, against the order of R. R. Pope, Esq., District Judge of Hooghly, dated the 26th of June 1891, affirming the order of Babu Loke Nath Nundi, Munsiff of Serampore, dated the 1st of April 1891.

(1) I. L. R., 6 Calc., 513.

(2) I. L. R., 2 All., 284.

(3) I. L. R., 6 Mad., 81.