

after the entire mortgaged property has been exhausted. We must therefore overrule this contention also.

The result therefore is that we allow the appeal, with costs, and set aside the personal decree passed under order XXXIV, rule 6 of the Code of Civil Procedure.

*Appeal allowed.*

## APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava,  
Chief Judge and Mr. Justice E. M. Nanavutty*

ABDUL WAHID ALIAS CHHANGA AND OTHERS (OPPOSITE PARTY-APPELLANTS) *v.* RAHMAT ULLAH AND OTHERS (APPLICANTS-RESPONDENTS)\*

1936

December, 17.

*Partition suit—Decree—Final decree for partition passed—Limitation for filing stamp paper for preparation of final decree—Limitation Act (IX of 1908), Article 181, applicability of.*

Where the order for a final decree for partition is made and it is laid down in it that the decree be prepared when the necessary stamp is filed, an application made more than three years after that order offering to file the stamp paper and asking to have the final decree engrossed on it, is merely a step in the proceedings for preparation of the final decree and is not subject to any rule of limitation as after the making of the order for final decree the proceedings must be deemed to be pending until the decree is engrossed on a stamp paper. *Bisheshwar Gir Goshain v. Satish Chandra Chatterji* (1), *Lalta Prasad v. Brahma Din* (2), *Jotindra Mohan Tagore v. Bejoy Chand Mahtap* (3), and *Ramanathan Chetty v. Alagappa Chetty* (4), referred to.

Mr. Sri Ram, for the appellants.

Mr. Moti Lal Saksena, for the respondents.

SRIVASTAVA, C. J. and NANAVUTTY, J. :—The facts of the case are that a preliminary decree for partition was passed in favour of the plaintiffs-appellants. On an

\*Execution of Decree Appeal No. 25 of 1934, against the order of Babu Pratap Shankar, Civil Judge of Mohanlalganj at Lucknow, dated the 20th of December, 1933.

(1) (1929) A.I.R., Oudh, 117.

(2) (1929) I.L.R., 5 Luck., 280.

(3) (1904) I.L.R., 32 Cal., 433.

(4) (1929) I.L.R., 53 Mad., 378.

1956

ABDUL  
WAHID  
v.  
RAHMAT  
ULLAH

Srivastava,  
C. J. and  
Nanaootty,  
J.

application for the decree being made final the parties referred the subject matter of the final decree to arbitration. The arbitrators made their award on the 27th of November, 1929. On the 13th of January, 1930, an application was made for filing the award and on the 30th of January, 1930, an order was made for a final decree in terms of the award. It was further ordered that the decree be prepared when the necessary stamp was filed. As none of the parties filed the stamp in spite of notice being issued to them the court dropped the proceedings on the 16th of August, 1930. Subsequent to this the plaintiff no. 2 died and on the 26th May, 1933, an application was made by his legal representatives to have their names substituted in place of the deceased. The application was granted on the 9th of September, 1933. While these proceedings were pending an application was also made by the legal representatives of the plaintiff No. 2 offering to file the stamp paper and asking to have the final decree engrossed on the stamp paper. The last mentioned application was opposed by the respondents on the ground that it was barred by time. In support of this reliance was placed on the decision of a Bench of this Court in *Bisheshwar Gir Goshain v. Satish Chandra Chatterji* (1) in which it was held that an application for making absolute a preliminary decree for partition is governed by Article 181. The learned Civil Judge of Mohanlalganj feeling himself bound to decide the matter in accordance with this ruling held that the application was barred by Article 181 of the Indian Limitation Act and dismissed it. On appeal it has been contended that the decision in *Bisheshwar Gir Goshain v. Satish Chandra Chatterji* (1) should be deemed to have been overruled by a subsequent decision of another Bench of this Court in *Lalta Prasad v. Brahmadin and Ram Dayal* (2) in which it was

(1) (1929) A.J.R., Oudh, 117.

(2) (1929) I.L.R., 5 Luck., 280.

held that there was no limitation applicable to an application made in a partition suit after the passing of a preliminary decree by which the shares of the parties are defined in order that the proceedings may be continued for the purpose of actually effecting a partition and that a final decree for partition may be prepared. Reliance has also been placed on *Jotindra Mohan Tagore v. Bejoy Chandra Mahip* (1) and *Ramanathan Chetty v. Alagappa Chetty* (2) in support of the argument that in such cases the suit must be considered to be pending until the final decree has been passed and hence an application to pass a final decree in such a suit is not subject to any limitation. We are of opinion that the question raised by the appellant does not really arise in the case. An application for a final decree was made when the matter was referred to arbitration. No question of limitation arises with regard to those proceedings. The application which was made on the 4th of August, 1933, was not an application for making a final decree, order for which, as stated before, had already been passed on the 30th of January, 1930. After the making of that order the proceedings must be deemed to be pending until the decree is engrossed on a stamp paper. The application made on the 4th of August, 1933, in reality meant nothing more than that the stamp paper which the applicant offered to file be accepted. In our opinion such an application was merely a step in the proceedings for preparation of the final decree and was not subject to any rule of limitation. We accordingly allow the appeal with costs, set aside the order of the lower court and direct that the appellants be permitted to file the stamp paper and that the final decree be engrossed on it when the stamp paper is filed.

*Appeal allowed.*

1936

ABDUL  
WAHID  
v.  
RABMAT  
ULLAH

Srivastava,  
C. J. and  
Narainity,  
J.

(1) (1904) I.L.R., 32 Cal., 483.

(2) (1929) I.L.R., 53 Mad., 378.