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a stop to. The judgment-debtor would have been in a far better position, and so also the courts, if he had examined the witnesses present in court on the 30th April. Perhaps much of the time and harassment of the opposite party would have been saved. I have no hesitation in holding that the conduct on the part of the judgment-debtor or his legal representative was improper in refusing to go on with the case when the witnesses were present, simply because the court rejected the application for summoning the expert. Besides the costs awarded to the decree-holder by the courts below, the judgment-debtor must pay to the decree-holder Rs. 64 as cost of hearing in this Court, as a condition precedent to the hearing of the case in the court below, within a fortnight from the notice given to the judgment-debtor by the Subordinate Judge on the arrival of the records in his Court.

BUCKNILL, J.—I agree.

Appeal allowed.

APPELLATE CIVIL.

Before Jwala Prasad and Bucknill, J.J.

AMRIT LAL

v.

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Limitation Act, 1908 (*Act IX of* 1908), *Schedule* 1, *Article* 182(5)—*Step-in-aid of execution, when application for transfer of decree is not—Code of Civil Procedure*, 1908 (*Act V of* 1908), *section* 39.

An application for the transfer of a decree to another court for execution is not a step-in-aid of execution within the meaning of Article 182(5) of the Limitation Act, 1908, if

* Appeal from Appellate Order No. 221 of 1921, from an order of J. A. Sweeney, Esq., District Judge of Gaya, dated the 18th July 1921, affirming an order of Babu Abinash Chandra Nag, Subordinate Judge of Gaya, dated the 15th November, 1920.

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the application was to transfer the decree to a court who had no jurisdiction to try the suit in which the decree was passed.

Narasayya v. *Venkatakrishnayya* (1), *Shanmuga Pillai* v. *Ramanathan Chetti* (2), *Ylazorath Kibulav Sayed Ghulam Ghouse Shal Sahib Kadiri* v. *Sunni Lall Agarwala*(3) and *Abdulla Sahib* v. *Ahmed Hussain Saheb*(4), not followed.

Shri Sidheshwar Pandit v. *Shri Harihar Pandit*(5), *Gokul Kristo Chunder* v. *Aukhil Chander Chatterjie*(6) and *Shamshundar Shaha* v. *Anath Bandu Saha*(7), followed.

Haji Abdul Gani v. *Raja Rani*(8), *Shaikh Khoda Bukhsh* v. *Bahadur Ali*(9), *Mussammat Kaniz Zohra* v. *Boondi Sahu Sahu*(10), *Sheibaran Mahto* v. *Mussammat Bhogea*(11) and *Chattar* v. *Newal Singh*(12), referred to.

Bipin Behari Mitter v. *Bibi Zohra*(13), *Keshva Surendra Sahi* v. *Mussammat Mulakrani Koer*(14) *and Kunj Behari Singh* v. *Tarapada Mitter* (15), distinguished.

Appeal by the decree-holder.

The facts of the case material to this report are stated in the judgment of Jwala Prasad, J.

Atul Krishna Roy and *H. P. Sinha*, for the appellant.

Purnendu Narain Sinha and *Nitai Chandra Ghosh*, for the respondents.

JWALA PRASAD, J.—The only question for determination in this appeal is whether the application of the appellants for execution of their decree filed on the 29th May, 1920, is barred by limitation or not.

The solution of the question depends upon whether the application of the decree-holders, dated the 24th

(1) (1884) I. L. R. 7 Mad. 397.
(2) (1894) I. L. R. 17 Mad. 309.
(3) (1910) 5 Ind. Cas. 155.
(4) (1914) 22 Ind. Cas. 275.
(5) (1888) I. L. R. 12 Bom. 155.
(6) (1889) I. L. R. 16 Cal. 457.
(7) (1910) I. L. R. 37 Cal. 574.
(8) (1916) 1 Pat. L. J. 232, F.B.
(9) (1918) Pat. 130.
(10) (1917) 2 Pat. L. J. 115.
(11) (1918) 3 Pat. L. J. 639.
(12) (1890) I. L. R. 12 All. 64.
(13) (1908) I. L. R. 35 Cal. 1047.
(14) (1919) 4 Pat. L. J. 35.
(15) (1919) 4 Pat. L. J. 49.

August, 1917, whereby the decree in question was transferred to the Court of the 1st Munsif for execution was a step-in-aid of execution under Article 182, clause (*v*) of the Limitation Act.

The decree in question was passed by the Subordinate Judge of the second court, Gaya, in a suit the value of which was stated to be Rs. 5,000. The suit was therefore beyond the jurisdiction of the Munsif to whom the decree was transferred for execution in pursuance of the application of the decree-holder of the 24th August, 1917.

Now it has been concluded by authorities that an application for the transfer of a decree for execution to another court is a step-in-aid of execution; but in order to save limitation such an application must also be an application in accordance with law within the meaning of clause (*v*) of Article 182. If the Munsif to whom the decree was sent for execution was competent to execute it then undoubtedly the application of the decree-holder, dated the 24th August, 1917, was in accordance with law and can be taken advantage of by the decree-holder in order to save the present application for execution from being barred by limitation. If on the other hand the Munsif had no jurisdiction to execute the decree the Subordinate Judge had no power to transfer the decree to him for execution and therefore the application of the 24th August, 1917, asked for a relief which the Subordinate Judge was not competent to grant. In that view the application of the 24th August, 1917, would not be an application in accordance with law and therefore would be of no avail to him.

There has been a sharp division of opinion in the several High Courts in India as to whether a Court not having jurisidiction over an original suit can execute a decree obtained in that suit or not. The Madras High Court as early as in the year 1884 held that it is not necessary that the executing court should also have been competent to try the original suit [see *Narasayya* v.

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Venkatakrishnayya (1)]. A note of dissent was struck in the Bombay High Court in the year 1887 in the case of *Shri Sidheshwar Pandit* v. *Shri Harihar Pandit* (2). The matter then came to be dealt with by the Calcutta High Court in 1889, in the case of *Gokul Kisto Chunder* v. *Aukhil Chander Chatterjie*(3), where a Division Bench of that Court presided over by Piggot and Beverley, J. J., agreed with the view taken by the Bombay High Court and held that the Court executing the decree should also be a court competent to try the original suit so far as the pecuniary jurisdiction was concerned. Muttusami Ayyar, J., who was a party to the decision in the first mentioned case, adhered to his view in the case of *Shanmuga Pillai* v. *Ramanathan Chetti* (4). In the judgment delivered by him he tried to meet all the objections raised by the Bombay and the Calcutta High Courts to the view expressed by him in that case.

The aforesaid decisions relate to a period prior to the present Code of Civil Procedure of 1908, but the law on the subject does not appear to have been materially altered by the present Code. The only alteration is in the power of the court which passes a decree to transfer *suo moto* a decree for execution to any court subordinate to it. In the Code of 1882, section 223, the clause on the point empowered the court which passed the decree to send it of its own motion for execution to any subordinate court. The corresponding provision in the Code of 1908, section 39, clause (*ii*), has added the words "of competent jurisdiction" to the words "Subordinate Court" occurring in the former Code: in other words under the present law it has been expressly made clear that a court which passes decree can send it of its own motion for execution to any "Subordinate Court" of competent jurisdiction.

Mr. *Atul Krishna Roy* submits that the present case is governed by clause (*i*) of section 39 under which,

(1) (1884) I. L. R. 7 Mad. 397.
(2) (1888) I. L. R. 12 Bom. 155.
(3) (1889) I. L. R. 16 Cal 457.
(4) (1894) I. L. R. 17 Mad. 309.

on the application of the decree-holder, the court which passed the decree may send it for execution to another court in the circumstances and for the reasons set forth in clauses (*a*) to (*d*) of the section. He contends that those clauses (*a*) to (*d*) do not in any way restrict the transfer of a decree for execution to a court only of competent jurisdiction. He says that on the application of the decree-holder in this case the court which passed the decree could send it for execution to any court whether that court be of competent jurisidiction or not. Plainly speaking his contention is that there is nothing in section 39 to prevent the Subordinate Judge who passed the decree from sending it for execution to the court of the Munsif not having the pecuniary jurisdiction to try the suit in which the decree was passed. He also refers to section 6 of the Code of Civil Procedure which runs as follows :

> " Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits, the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction."

The words in this section are virtually the same as in the corresponding section of the old Code. Mr. *Roy* contends that this section applies only to suits and not to execution proceedings. He has also referred to provisions in the Code relating to the transfer of suits from one court to another set forth in sections 22 to 24 of the Code and says that the Legislature has expressly made it clear that a suit can only be transferred for trial to a court of competent jurisdiction. He contends that there is no such provisions in section 39 of the Code which relates to the transfer of a decree for execution. He therefore says that the Legislature evidently meant that a decree should be sent for execution to any court where it can with facility be executed by reason either of the property of the judgment-debtor being situate within the jurisdiction of a particular court or of the judgment-debtor residing therein regardless of whether that Court had jurisdiction to try the original suit or not and irrespective of whatever the pecuniary or territorial jurisdiction of that court

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may have been. Mr. *Roy* says that there can be no doubt that a decree may be sent for execution to a Court which may not be competent to try the original suit: for instance a decree for money obtained in a court in Patna on a hand-note or a bond against a defendant residing in Patna may be transferred for execution to a court in the United Provinces by reason of the property of the judgment-debtor being within the jurisdiction of that court even though that court was not competent to try the original suit inasmuch as neither the cause of action arose in the jurisdiction of that court nor the defendant resided therein. Mr. *Purnendu Narain Sinha*, on the other hand, contends that though in the circumstances set forth in the illustration given above, the decree may be executed by a court not being competent to try the suit, yet a court in the United Provinces executing the decree should have the pecuniary jurisdiction to try the original suit: in other words he makes a distinction between pecuniary and territorial jurisdiction. He says that although for the purpose of execution a court executing a decree may not have the territorial jurisdiction to try the suit yet it must have pecuniary jurisdiction to try it in order to be competent to execute the decree. He has also referred to section 42 of the Code of Civil Procedure and has contended generally that the executing court may have to decide many questions relating to the execution, discharge or satisfaction of the decree, and those questions which might involve disputes of a larger value much beyond the pecuniary limit of the Munsif to try and consequently the court of the Munsif should not be allowed to execute a decree passed by the Court of the Subordinate Judge. He has also referred to the provisions of appeals, namely that the decisions of the Munsif are appealable to the District Judge whereas the decisions of the Subordinate Judge may be appealable to the High Court directly, and therefore he contends that in questions decided by the Munsif in the course of the execution of decrees, appeals might lie to the District Judge whereas they ought to be cognisable by the High Court alone. Mr. *Roy* has practically adopted the reasons given by

the Madras Court and Mr. *Purnendu Narain Sinha* has adopted on the other hand the reasons given by the Calcutta High Court. The question came before the said Courts even after the present Code of Civil Procedure came into operation and both the High Courts have stuck to their own views—[vide *Ylazorath Kibulav Syed Ghulam Ghouse Shal Sahib Kadiri* v. *Sunni Lal Agarwala* (1), *Shamsunder Shaha* v. *Anath Bandu Saha* (2), and *Abdulla Sahib* v. *Ahmed Hussain Saheb* (3)].

It is obvious that the point for determination is somewhat difficult and that equally weighty reasons can be advanced in support of both views. The last ruling of the Calcutta High Court was in *Shamsunder Shaha* v. *Anath Bandu Saha* (2), above quoted.

In a case of this kind we think that we ought to follow the Calcutta ruling unless we are satisfied that that ruling is decidedly wrong. This principle was laid down as early as in May 1916 shortly after the establishment of the Patna High Court—[vide *Haji Abdul Gani* v. *Raja Ram* (4)], and has ever since then been repeated on various occasions [vide *Shaikh Khoda Bukhsh* v. *Bahadur Ali*(5), *Mussammat Kaniz Zohra* v. *Boondi Sahu* (6), and *Sheobaran Mahto* v. *Mussammat Bhogea* (7)]. There can hardly be any question that up to 1916 before the establishment of this Court the subordinate courts in Gaya were governed by the decisions of the Calcutta High Court according to which the Munsif of Gaya was not competent to execute the decree passed on the 23rd March, 1907, by the Subordinate Judge of Gaya. In other words, as laid down by Sir Lawrence Jenkins in *Shamsunder Shaha* v. *Anath Bandu Saha* (8), the order of the Subordinate Judge transferring the decree for execution to the Court of the Munsif was without jurisdiction.

(1) (1910) 5 Ind. Cas. 155
(2) (1910) 37 Cal. 574.
(3) (1914) 22 Ind. Cas. 275.
(4) (1916) 1 Pat. L. J. 232, F.B.
(5) (1918) Pat. 130.
(6) (1917) 2 Pat. L. J. 115.
(7) (1918) 3 Pat. L. J. 639.
(8) (1910) I. L. R. 37 Cal. 574(577).

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Adopting the principle laid down by Sir Lawrence Jenkins in the aforesaid case we are inclined to agree with the view taken in the Calcutta High Court that the Munsif of Gaya had no jurisdiction to execute the decree passed by the Subordinate Judge of that district. There could not be any question of a *bonâ fide* mistake on the part of the decree-holder in the present case. Mr. *Roy* says that the view taken in the Madras High Court in *Abdulla Sahib* v. *Ahmed Hussain Saheb* (1), was believed by his client to be the correct view in preference to the view taken in the Calcutta High Court and, therefore, on the 24th August, 1917, just after the constitution of this Court, the appellant filed his application for transfer of the decree to the Court of the Munsif. But the appellant must be presumed to have known the Calcutta ruling, and therefore he had no right to put in his application in direct contravention of the authorities in Calcutta. If once it is held that the Munsif had no jurisdiction to execute the decree, then the application of the decree-holder of the 24th August, 1917, praying for the transfer of the decree to the Court of the Munsif for execution was not in accordance with law. It was pertinently pointed out in the case of *Chattar* v. *Newal Singh* (2), that the necessary consequence of adopting a contrary view would be to hold "that any application however absurd a decree-holder might make to a court, would be sufficient to render his application one in accordance with law", I think the term "applying in accordance with law", means applying to the court to do something in execution which by law that court is competent to do. I do not think that it means applying to the court to do something which, either to the decree-holder's direct knowledge in fact or from his personal knowledge of the law, he must have known the court was incompetent to do".

As observed above, the decree-holder in this case must be presumed to have had knowledge of the law

(1) (1910) 22 Ind. Cas. 275. (2) (1890) I. L. R. 12 All. 64.

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as laid down by the Calcutta High Court that the Munsif had no jurisdiction to execute the decree in question; and that the Subordinate Judge was not competent to transfer the decree for execution and consequently the application in question of the 24th August, 1917, was not in accordance with law. We therefore agree with the view taken by the court below that the application of the 24th August, 1917, is of no avail to the decree-holder and consequently the present application for execution filed on the 29th March, 1920, and registered on the 14th June, 1920, is barred by limitation. The view taken by the Calcutta High Court appears to be correct.

Our attention has been drawn to certain cases in which mistakes or defects either in the application for execution or in the order of the court has been condoned in favour of a decree-holder: for instance, in the case of *Bipin Behari Mitter* v. *Bibi Zohra*(1), an application for execution of a decree made under the influence of a *bonâ fide* mistake against a dead person was held to be an application in aid of execution. But there the decree was passed on the 1st April, 1903, and the application was made on the 1st March, 1906; the judgment-debtor had died on the 25th May, 1903, but the decree-holder had not come to know of the death until the 26th April, 1906, that is, long after the filing of the application for execution, and soon after he came to know of it he made an application praying for the substitution of the names of the legal representatives of the deceased judgment-debtor. That case was decided upon its own merits and until the decree-holder had known of the death of the judgment-debtor he had to regard the judgment-debtor on the record as the person against whom the execution could proceed. In the case of *Keshva Surendra Sahi* v. *Mussammat Mulakrani Koer* (2), the application was made without having applied for the appointment of a guardian *ad litem* of the minor judgment-debtor. There the application was made in

(1) (1908) I. L. R. 35 Cal. 1047. (2) (1919) 4 Pat. L. J. 35.

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accordance with law inasmuch as there was no defect in the application and the application for the appointment of the guardian could be made at a later stage during the course of the execution. In *Kunj Behari Singh* v. *Tarapada Mitter* (1), the decree was sent for execution direct to a subordinate court of another district instead of through the District Court of that district. The mistake was of the court and not of the decree-holder. Therefore it was held that the decree-holder could not suffer on account of the mistake of the court inasmuch as his application for the transfer of the decree was in accordance with law without any defect whatsoever.

In conclusion we direct that this appeal be dismissed but in the circumstances we make no order as to costs.

BUCKNILL, J.—This was an appeal from a decision of the District Judge of Gaya, dated the 18th July, 1921, affirming an order of the Subordinate Judge of the same place, dated the 15th of November in the previous year. The circumstances under which the appeal came before this Bench are very simple but they raise a question to which the answer is not very easy.

The plaintiffs obtained three decrees against the defendants in a suit No. 161 of 1905, which was brought before the Subordinate Judge of Gaya. One of these decrees appears to have been for possession of certain properties, a second for the costs and the third for mesne profits. It is admitted that the value of the subject-matter of the suit was outside the jurisdiction of any Munsif of the district. Various attempts seem to have been made by the decree-holders, most of them apparently very half-hearted, to execute their decrees; but, for various apparent and non-apparent reasons into which it is not necessary to go here, no execution appears to have been really effective and the last execution application made before the Subordinate Judge was dismissed on the 25th July, 1916. On the

(1) (1919) 4 Pat. L. J. 49.

24th August, 1917, the plaintiffs applied to the Subordinate Judge and obtained a transfer of the execution of the decrees to the Court of the 1st Munsif of Gaya. It seems to have been registered there on the 1st September, 1917, and was dismissed, I do not know why, on the 20th September of the same year. After that came the present application to the Subordinate Judge for execution filed on the 29th May, 1920. Now the respondents here contend that the last execution proceedings in the Subordinate Judge's Court having been dismissed on the 25th July, 1916, and the present application having been filed on the 29th May, 1920, the application is barred by the three-years' rule of limitation. On the other hand the appellants maintain that that application for transfer which was made by them on the 24th August, 1917, was a definite step in the execution proceedings which has kept their rights alive and which prevent the operation against them of the limitation of three years running as from the 25th July, 1916. It is common ground that an application for transfer is primarily a step which saves limitation. For that proposition there is ample authority, but it is urged that the transfer in order to be effective in that direction must be one which can be properly made and that if it was not competent for the Subordinate Judge to have made such a transfer order then there was no step in fact taken recognized by law which would in any way alter the commencement of the running of the limitation period: nor is this proposition in itself seriously contested. What, however, is the real point is as to whether in this case the Subordinate Judge could legally make the order such as he did, that is transferring to the Munsif for execution a decree concerning a subject-matter greater in value than the Munsif had power to deal with in a suit. The authorities are in direct conflict on this question. The Madras High Court has consistently held that a Munsif has jurisdiction to execute a decree relating to subject-matter of greater value than that which he had power to deal with in a suit; the Calcutta High Court has always been of the contrary opinion.

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BUCKNILL, J.

I am not prepared to subscribe altogether to the view that this Court must slavishly follow the decisions of the Calcutta High Court or of any other High Court: but after having listened to the arguments in this case very carefully and having read all the cases quoted in these proceedings, I have come to the conclusion that the Calcutta rulings are correct. I therefore agree with my learned colleague that this appeal should be dismissed.

Appeal dismissed.

REVISIONAL CIVIL.

Before Dawson Miller, C. J. and Mullick, J.

1922.

May, 11.

MAHARAJ BAHADUR SINGH

v.

A. H. FORBES.*

Superintendence—High Court's powers of—injunction issued by lower court not binding on District Judge—duty of District Judge to prevent contempt of lower court's order—power of High Court to exercise superintendence over District Judge—Inherent powers.

Where the High Court issued an order that a sale which had been ordered by the District Judge should not be held if the decretal amount was deposited in court on a certain date, and that in the event of the money not being deposited the sale should be held on a particular day, *held*, that the order of the High Court was in no sense in the nature of a mandatory order directing the property to be sold in any event, but merely an order staying the sale until the petitioner had an opportunity of paying the money into court.

Therefore, where the judgment-debtor had obtained such an order from the High Court and had subsequently instituted a suit in which he claimed the property as his own, and obtained a temporary injunction restraining the decree-holder from selling the property, *Held*, that although the court in which the suit had been instituted had no power to

* Civil Revision No. 421 of 1921.