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DAS, J.

the Civil Procedure Code provides that a decree may be executed either by the Court which passes it or by the Court to which it is sent for execution. Section 39 gives power to the Court to send the decree for execution to another Court on the happening of certain conditions which are specified in that section. It seems to me that on a consideration of these two sections it must follow that the decree cannot be executed simultaneously in two Courts. This view was taken by the Judicial Committee in the case of *Maharaja of Bobbili* v. *Sree Rajah Narasaraju Peda Baliara Simhulu Bahadur Garu* (1). In my opinion the decision of the learned Judge in the Court below is right and must be affirmed.

I would dismiss this appeal with costs.

ADAMI, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Adami and Das, JJ.

TRILOKE NATH JHA

v.

BANSMAN JHA.*

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Oct., 30.

Execution of Decree—Step-in-aid of execution, application for confirmation of sale and delivery of possession, whether is.

When property has been sold in execution and the sale has failed to realise the amount due under the decree, an application by the decree-holder for further execution is not a step-in-aid of execution.

Neither an application for confirmation of an execution sale nor an application for delivery of possession is a step-in-aid of execution.

* Appeal from Original Order No. 224 of 1921, from an order of Babu Shyam Narayan Lal, Officiating Subordinate Judge of Darbhanga, dated the 25th May, 1921.

(1) (1916) L. L. R. 39 Mad. 640; 43 I. A. 238.

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Gobind Pershad v. *Runglal*(1), *Sariatoolla Molla* v. *Raj Kumar Roy*(2), *Moti Lal* v. *Makund Singh*(3), *Prem Krishna Dhur* v. *Juramoni Chowkidar*(4), *Annoda Prosanna Sen* v. *Somaruddi Mridha*(5), *Sadashiva* v. *Narayan Vithal Mawal*(6) and *Lakshmanan Chettiar* v. *Kannammal*(7), not followed.

Bhagwati v. *Banwari Lal*(8), *Panchanan Chowdhury* v. *Nrisingha Prashad Roy*(9), *Umesh Chandra Dass* v. *Shib Narain Mandal*(10), *Hem Chandra Choudhury* v. *Brojo Sundari Debee*(11), *Fazal Imam* v. *Matta Singh*(12) and *Gunga Prashad Bhoomick* v. *Debi Sundari Dabea*(13), approved.

Kattayat Pathumayi v. *Raman Menon*(14), *Sandhu Taraganar* v. *Hussain Sahib*(15), *Annanda Mohan Roy* v. *Hara Sundari*(16), *Bhimal Das* v. *Mussammat Ganesha Kuer*(17), *Muhammad Mosraf* v. *Habil Mia*(18) and *Haji Abdul Gani* v. *Raja Ram*(19), referred to.

Appeal by the decree-holders.

On the 29th March, 1917, the plaintiffs obtained a decree and on the 20th July, 1917, they applied to execute it. Certain properties belonging to the judgment-debtors were sold on 21st February, 1918, and purchased by the decree-holders. An application for confirmation of the sale was made by the decree-holder purchasers on the 25th March, 1918, and an application for delivery of possession on the 8th July, 1918. The proceeds of the sale, however, were not sufficient to satisfy the decree and the decree-holders presented another application for execution on the 20th March, 1921. The first Court held that the last mentioned application was barred by limitation.

(1) (1894) I. L. R. 21 Cal. 23.
(2) (1900) I. L. R. 27 Cal. 709.
(3) (1897) I. L. R. 19 All. 477.
(4) (1908-09) 13 C. W. N. 694.
(5) (1919) 30 Cal. L. J. 135.
(6) (1911) I. L. R. 35 Bom. 452.
(7) (1911) I. L. R. 24 Mad. 185.
(8) (1909) I. L. R. 31 All. 82, F.B.
(9) (1910) 11 Cal. L. J. 356.
(10) (1904) I. L. R. 31 Cal. 1011.
(11) (1882) I. L. R. 8 Cal. 89.
(12) (1884) I. L. R. 10 Cal. 549.
(13) (1885) I. L. R. 11 Cal. 227.
(14) (1903) I. L. R. 26 Mad. 740.
(15) (1905) I. L. R. 28 Mad. 87.
(16) (1896) I. L. R. 23 Cal. 196.
(17) (1896-97) 1 Cal. W. N. 658.
(18) (1907) 6 Cal. L. J. 749.
(19) (1916) 1 Pat. L. J. 232, F. B.

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S. P. Sen (with him *Chandra Shekhar Banerjee*), for the appellants.

Baikuntha Nath Mitter, for the respondents.

DAS, J.

DAS, J.—The question involved in this appeal is whether the execution of the decree is barred by limitation. On the 20th July, 1917, the plaintiffs sought to execute the decree which they had obtained on the 29th March, 1917. On the 21st February, 1918, certain properties belonging to the judgment-debtors were sold and the decree-holders themselves purchased those properties. The sale proceeds not being sufficient to satisfy the decree, the decree-holders presented another application for execution of the decree on the 29th March, 1921. The lower Court has come to the conclusion that the application of the 29th March, 1921, is barred by limitation.

The application of the 29th March, 1921, is apparently barred by limitation; but it is pointed out on behalf of the appellants that there was an application on their behalf on the 25th March, 1918, for confirmation of the sale which as I have said took place on the 21st February, 1918, and that there was a further application on their behalf on the 8th July, 1918, for delivery of possession. It is urged on behalf of the appellants that each of these applications was an application to take some step-in-aid of execution and that in this view the application of the 29th March, 1921, is not barred by limitation. So far as the application of the 25th March, 1918, is concerned, I am clearly of opinion that that application does not save limitation. No doubt it was held in the case of *Gobind Pershad* v. *Runglal* (1) that an application for confirmation of sale is an application to take some step-in-aid of execution; but, so far as I am aware, that case has never been followed in the Calcutta High Court. The case of *Gobind Pershad* v. *Runglal* (1) was decided on the 22nd of June 1893; but on the 7th April, 1893, it was held by Ameer Ali, J., in the case of *Panchanan*

(1) (1894) I. L. R. 24 Cal. 23.

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Chowdhury v. *Nrisingha Parshad Roy* (1) that an application for confirmation of sale is not an application to take some step-in-aid of execution. The case of *Panchanan Chowdhury* v. *Nrisingha Parshad Roy*(1) was not brought to the notice of the learned Judges who heard the case of *Gobind Pershad* v. *Rungiai* (2). In the later case of *Umesh Chandra Dass* v. *Shib Narain Mandal* (3) it was held by the Calcutta High Court that such an application is not an application to take some step-in-aid of execution. It was pointed out in the last mentioned case that such an application, not being made by a decree-holder as such but by an auction-purchaser can in no sense be regarded as an application by the decree-holder. It was also pointed out that no application is as a matter of fact required for the purpose of having the sale confirmed. The decisions of the Calcutta High Court do not support the contention of Mr. *Sen* and I hold that the application of the 25th March, 1918, was not an application to make some step-in-aid of execution.

I now come to the application of the 8th July, 1918, which was an application for delivery of possession. There is some difficulty in deciding this point, not because there is any difficulty inherent in the point itself, but because the cases actually deciding this particular point are all in favour of Mr. *Sen's* contention. So far as I know the point has been discussed by the Calcutta High Court on three different occasions and on each occasion the Calcutta High Court came to the conclusion that an application by a decree-holder to be put in possession is an application to take some step-in-aid of execution. *Sariatoolla Molla* v. *Raj Kumar Roy* (4) is the earlier of these cases. The learned Judges thought that such an application was an application to make the execution final and complete and they followed the decision of the Allahabad High Court, in the case of *Moti Lal* v. *Makund Singh* (5). It is useful to point out that the decision of the

(1) (1910) 11 Cal. L. W. J. 356.
(2) (1894) I. L. R. 24 Cal. 23.
(3) (1904) I. L. R. 31 Cal. 1011.
(4) (1900) I. L. R. 27 Cal. 709.
(5) (1897) I. L. R. 19 All. 477.

Allahabad High Court in *Moti Lal* v. *Makund Singh*(1) has been reversed by the Full Bench of the Allahabad High Court in the case of *Bhagwati* v. *Banwari Lal* (2). The case of *Sariatoolla Molla* v. *Raj Kumar Roy* (3) was followed by Holmwood and Sharfuddin, J.J., in *Prem Krishna Dhur* v. *Juramoni Chowkidar* (4). It is somewhat difficult to appreciate the reasonings of the learned Judges deciding the case of *Prem Krishna Dhur* v. *Juramoni Chowkidar* (4); but they appear to have thought that the order under section 319 of the Civil Procedure Code being a judicial order the application which resulted in that order must be considered to be an application to take some step-in-aid of execution. The point was again debated in *Annoda Prosanna Sen* v. *Somoruddi Mridha*(5). Newbould, J. thought that he was conclusively bound by the decisions of the Court and he accordingly came to the conclusion that an application by a decree-holder to be put in possession is an application to take some step-in-aid of execution. Cumming, J. arrived at the opposite conclusion, and he thought that such an application could not be regarded as an application to take some step-in-aid of execution. The decisions of the Calcutta High Court undoubtedly support the view that an application by a decree-holder to be put in possession is an application to take some step-in-aid of execution. In Bombay and in Madras a similar view has prevailed [see *Sadashiva* v. *Narayan Vithal Mawal* (6) and *Lakshmanan Chettiar* v. *Kannammal* (7)], although eminent Judges in Madras have thought that if the matter were *res integra* they might have decided the point adversely to the decree-holder [see *Kattayat Pathumayi* v. *Raman Menon* (8) and *Sandhu Taraganar* v. *Hussain Sahib* (9)]. In Allahabad the view at one time found favour that an application by

(1) (1897) I. L. R. 19 A.. 477.
(2) (1909) I. L. R. 32 All. 82, F.B.
(3) (1910) I. L. R. 27 Cal. 709.
(4) (1908-09) 13 Cal. W. N. 694.
(5) (1919) 30 Cal. L. J. 135.
(6) (1911) I. L. R. 35 Bom. 452.
(7) (1901) I. L. R. 24 Mad. 185.
(8) (1903) I. L. R. 26 Mad. 740.
(9) (1905) I. L. R. 28 Mad. 87.

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a decree-holder to be put in possession of the property purchased by him is an application to take some step-in-aid of execution [see *Moti Lal* v. *Makund Singh*(1)], but the Full Bench decision of that Court in the case of *Bhagwati* v. *Banwari Lal* (2) has undoubtedly overruled the case of *Moti Lal* v. *Makund Singh* (1) and other cases based on that case. If I had to decide the case merely on the authorities which were placed before us we would be obliged to hold that the application of the 8th July, 1918, was an application by the decree-holder to take some step-in-aid of execution and that it consequently saved limitation.

But it seems to me that there are numerous decisions of the Calcutta High Court which cannot be reconciled with the three decisions to which I have referred and upon which Mr. *Sen* relied. It was held in the case of *Annanda Mohan Roy* v. *Hara Sundari* (3) that neither an application by a decree-holder to receive poundage fee from him in respect of the judgment-debtor's property purchased by himself, nor an application by him to be allowed to set off the purchase money against the decree instead of paying it into Court, is an application to take some step-in-aid of execution. It may be pointed out that a poundage fee is a fee calculated upon the price for which the property sells and is payable by the decree-holder after the sale and before taking delivery of the property. Now if an application by the decree-holder asking the Court to receive a poundage fee is not regarded as an application to take some step-in-aid of execution, it is difficult to understand how an application to be put in possession of the property purchased by him can be regarded as an application to take some step-in-aid of execution. It was pointed out in that case by the late Chief Justice of the Calcutta High Court that when the sale of the property attached in execution has been completed and the purchase money has been paid into Court, nothing more remains to be done in respect of the execution of

(1) (1897) I. L. R. 19 All. 477. (2) (1909) I. L. R. 31 All. 82, F. B.
(3) (1896) I. L. R. 23 Cal. 196.

the decree as against that property. In the case of *Bhimal Das* v. *Mussammat Ganesha Kuer* (1), it was held that no appeal lies from an order refusing the application of the decree-holder to be put in possession under section 318, the question not falling under section 244. Now in order to establish that an application by the decree-holder to be put in possession of the property purchased by him is an application to take some step-in-aid of execution, it must be established first, that the application is in fact by a decree-holder; and secondly, that the application relates to the execution of the decree. If these facts are established then the question involved in the decision of such an application would undoubtedly be a question between the parties to the suit and relating to the execution of the decree and would consequently fall under section 47 of the Code of Civil Procedure. The decision in *Bhimal Das* v. *Mussammat Ganesha Kuer*(1) accordingly denies the validity of the arguments upon which we are invited to hold that an application by a decree-holder to be put in possession of the property is an application to take some step-in-aid of execution. Indeed if the arguments of Mr. *Sen* be right then the case of *Bhimal Das* v. *Mussammat Ganesha Kuer* (1) was wrongly decided, and it may be pointed out that that case was decided on the view that the execution was at an end with the sale of the property, and that no question relating to execution was involved in an application to be put in possession of the purchased property by the decree-holder. The case of *Bhimal Das* v. *Mussammat Ganesha Kuer* (1) was followed by Brett and Mookherji, J.J., in *Muhammad Mosraf* v. *Habil Mia* (2) and this is the view which has been accepted by the Full Bench of this Court in *Haji Abdul Gani* v. *Raja Ram* (3). No doubt it was not decided by this Court in the case cited that an application by a decree-holder to be put in possession of the purchased property is not an application to take some step-in-aid of execution; but it seems to me that such a decision

(1) (1896-97) 1 Cal. W. N. 658. (2) (1907) 6 Cal. L. J. 749.
(3) (1916) 1 Pat. L. J. 232, F. B.

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is involved in a decision that no appeal lies from an order under rule 95 of Order XXI of the Code of Civil Procedure.

It is necessary to deal with an argument which was advanced to us by Mr. *Sen* on behalf of the decree-holder. He argued that a proceeding in execution cannot be said to be completed in a case of sale until he has obtained the proceeds and the benefit of the sale held in execution of the decree; and just as an application by a decree-holder who is not the auction-purchaser to obtain payment of purchase money is an application for taking some step-in-aid of execution, so also an application to be put in possession of that which represents the money where the decree-holder himself purchases and consequently no money passes ought to be regarded as an application to take some step-in-aid of execution. Now the point to be decided is whether an application by a decree-holder, when he is not the auction-purchaser, to obtain payment of purchase money is an application for taking some step-in-aid of execution. So far as the Calcutta High Court is concerned it has invariably held that such an application is not an application to take some step-in-aid of execution [see *Hem Chandra Choudhury* v. *Brojo Sundari Debee* (1), *Fazal Imam* v. *Matta Singh* (2) and *Gunga Prashad Bhoomick* v. *Debi Sundari Debea* (3)]. A useful test to apply would be this: supposing the decree-holder purchaser is unable to obtain possession, would it entitle him to take out further execution for that portion of the money which is represented by the property purchased by him of which he is unable to obtain possession? If the fact that he is unable to obtain possession would reopen the execution proceedings then there might be something to be said in favour of the view that execution is not complete until he obtains possession of the property; but it is well established that though the decree-holder purchaser is unable to obtain possession that would not entitle him

(1) (1882) I. L. R. 8 Cal. 89. (2) (1884) I. L. R. 10 Cal. 549.
(3) (1885) I. L. R. 11 Cal. 227.

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to take out further execution for that portion of his purchase money which is represented by the property purchased by him. It seems to me that execution comes to an end with the sale of the property and that whether or not the auction-purchaser obtains possession of the property sold is wholly immaterial for the purpose of the decree and it does not in any way affect it. Mr. Justice Banerji pointed out in the case of *Bhagwati* v. *Banwari Lal* (1) that if the decree-holder purchases the property but does not obtain possession that circumstance would not entitle him to take out execution of the decree which has already been satisfied. It seems to me that the arguments advanced before us by Mr. *Baikuntha Nath Mitter*, on behalf of the judgment-debtors, must prevail. The argument is founded on principle and is covered by the decision of this Court in *Haji Abdul Gani* v. *Raja Ram* (2) which is binding on us.

I would dismiss this appeal with costs.

ADAMI, J.—I agree.

Appeal dismissed.

CRIMINAL REFERENCE.

Before Mullick and Bucknill, JJ.

JHARU LAL

v.

MAHANTH MADAN DAS.*

1922.

Nov., 7.

Code of Criminal Procedure (Act V of 1898), sections 195 and 439—Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act IV of 1914)—Certificate Officer, forged application to, for payment of surplus proceeds—sanction, whether necessary for prosecution of forgers—revision, whether High Court may direct subordinate court to refrain from prosecution.

* Criminal Reference No. 66 of 1922, by Jadunandan Prasad, Esqr., Sessions Judge of Purnea, dated the 8th August, 1922.

(1) (1909) I. L. R. 31 All. 82, F. B. (2) (1916) 1 Pat. L. J. 232, F.B.