

APPELLATE CIVIL.

Before Adami and Das, J.J.

JUANENDRA NATH GHOSH

v.

KUMAR JOGENDRA NARAIN SINHA.*

1922.

Nov., 7.

Step-in-aid of execution—decree transferred for execution—application to court from which decree transferred, whether is a step-in-aid—Code of Civil Procedure, 1908 (Act V of 1908), sections 38 and 39.

An application made to a court from which a decree has been transferred for execution is not a step-in-aid of execution.

Maharaja of Bobbili v. Narasaraju Peda Baliara Simhulu Bahadur Garu(¹), followed.

Appeal by the decree-holder.

A decree having been obtained in the Small Cause Court in Calcutta, that Court, on the 8th July, 1912, ordered the decree to be executed by the Court at Pakaur. Subsequently, between 1912 and the 10th January, 1916, the execution case was retransferred to the Small Cause Court at Calcutta, but on the latter date was again transferred to the Court at Pakaur. On the 4th April, 1921, the decree-holder applied to the latter Court for execution. The judgment-debtor objected that the application was barred by limitation. The decree-holder, however, contended that in September, 1918, he had applied to the Small Cause Court in Calcutta for the issue of a sealed warrant in connection with the decree and that that application was a step-in-aid of execution. The first Court overruled the judgment-debtor's objection but on appeal the District Judge of Dumka held that the decree-holder's application for execution was time-barred. The decree-holder applied to the High Court.

* Appeal from Appellate Order No. 8 of 1922, from an order of A. G. Davies, Esq., District Judge of Santal Parganas, dated the 29th September, 1921, setting aside an order of I. S. Mackay, Esq., Subordinate Judge of Pakaur, dated the 16th August, 1921.

(1) (1916) I. L. R. 39 Mad. 540; 45 I. A. 238.

1922.

JUANENDRA
NATH GHOSH

v.

KUMAR
JOGENDRA
NARAIN
SINHA.

DAS, J.

S. K. Mitter (for *Saroshi Charan Mitter*), for the appellant.

Kulwant Sahay and *N. C. Roy*, for the respondents.

DAS, J.—The only question which arises in this appeal is whether the Court below has rightly dismissed the execution petition of the appellant on the ground that it was presented beyond time.

The appellant obtained a decree as against the respondent so far back as the 8th of July, 1921, in the Small Cause Court in Calcutta. It appears that the execution case was first transferred to the Pakaur Court and then retransferred to the Small Cause Court sometime between 1912 and the 10th January, 1916. On the 10th January, 1916, the decree-holder obtained another transfer of the execution case to the Pakaur Court.

Now it is admitted that between the 10th January, 1916, and the 4th of April, 1921, no steps were taken by the decree-holder for execution of his decree in the Pakaur Court. On the 4th of April, 1921, however, he did present an application for execution of his decree in the Pakaur Court.

The learned Judge in the Court below has come to the conclusion that that application could not be entertained by him as it was clearly barred by limitation. But it appears that the decree-holder sometime in September, 1918, applied to the Small Cause Court in Calcutta for the issue of a sealed warrant in connection with the decree which had been obtained by him against the respondent. Nothing seems to have come out of that application, but the appellant contends that the application which was made by him in September, 1918, in the Small Cause Court in Calcutta was an application asking the Court to take some step-in-aid of execution, then his present application is within time.

It seems to me that the contention advanced before us on behalf of the appellant must fail. Section 38 of

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 Bahara 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 J.J.

TRILOKE NATH JHA

v.

BANSMAN JHA.*

1922.

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; 45 I. A. 238.