

## APPELLATE CIVIL.

*Before Jwala Prasad and Kuirwant Sahay, J.J.*

SHEO SAHAY

v.

JAMUNA PRASAD SINGH.\*

1924.

Nov. 12.

*Limitation Act (Act V of 1908), Schedule 1, Article 182, Examination of a witness by the decree-holder whether a step-in-aid of execution.*

Any step taken by the decree-holder to remove an obstacle thrown by the judgment-debtor in the way of the execution of the decree is a step-in-aid of execution.

Where the judgment-debtor raised an objection to the execution of a decree, and the decree-holder examined a witness in order to meet the objection, *held*, that the decree-holder's action was a step-in-aid of execution.

*Rai Bahadur Kashi Nath Singh v. Syed Kabiruddin*(1), *Kedar Nath Dey v. Lakhi Kanta Dey*(2), *Brojendra Kishore Roy Chowdhury v. Dil Mahmud Sarkar*(3) and *Surajmal v. Sarjoog Prasad Singh*(4), referred to.

Appeal by the judgment-debtor.

The decree-holder took out execution of his decree sometime in April, 1919, whereon the holding of the judgment-debtor was attached and proclaimed for sale. The judgment-debtor filed a petition of objection on the 9th April, 1919, under section 47, Civil Procedure Code, to the effect that the holding being an occupancy holding was not saleable without the consent of the landlord and the tenant. When the execution case and the objection came on for hearing on the 15th May, 1920, a witness was examined on the application of

\* Appeal from Appellate Order no. 94 of 1924, from an order of Asutosh Chatterji, Esq., Additional District Judge, Patna, dated the 30th April, 1924, confirming an order of B. Jamini Mohan Mukherji, Munsif of Barh, dated the 4th December, 1923.

(1) (M. A. no. 281 of 1923, unreported).

(2) (1916-17) 21 Cal. W. N. 868.

(3) (1917-18) 22 Cal. W. N. 1027.

(4) (1917) 2 Pat. L. J. 5.

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the decree-holder with the object of meeting the objection of the judgment-debtor. The objection was upheld. The present execution petition was filed on 12th May, 1923, when the appellant raised the objection that it was barred by limitation. The Munsif held that the present execution was not barred as the application of the decree-holder for the examination of the witness was with the object of resisting the objection of the judgment-debtor and as such was a step-in-aid of execution. This decision was affirmed in appeal by the Additional District Judge. The judgment-debtor appealed to the High Court.

*Noresh Chandra Sinha* and *Nitai Chandra Ghosh*,  
for the appellant.

*Shivanandan Rai*, for the respondents.

JWALA PRASAD AND KULWANT SAHAY, J.J.—The only point raised in this appeal relates to limitation. It is said that the application of the decree-holder made on the 12th of May, 1923, is barred by limitation, the last execution being of 9th August, 1919. On behalf of the decree-holders it is urged that their application for execution is not barred, inasmuch as they had taken proper steps to further the execution of their decree on the 15th May, 1920. The Court below has accepted the contention of the decree-holders and has allowed the execution to proceed. The view taken by the Court below seems to be correct. On the 15th May, 1920, the decree-holders examined a certain witness in order to resist an objection filed by the judgment-debtor to the execution of the decree. That action on behalf of the decree-holders is certainly a step-in-aid of execution as contemplated by Article 182, Schedule I, of the Limitation Act. This view is supported by various authorities: [vide *Kedar Nath Dey Roy v. Lakhi Kanta Dey* (1), *Brojendra Kishore Roy Chowdhury v. Dil Mahmud Sarkar* (2), *Surajmal v. Sarjooq Prasad Singh* (3), and the

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(1) (1916-17) 21 Cal. W. N. 868. (2) (1917-18) 22 Cal. W. N. 1027.

(3) (1917) 2 Pat. L. J. 7.

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unreported decision of this Court in *Rai Bahadur Kashi Nath Singh v. Syed Kabiruddin* (1)]. The latter case was cited by Mr. *Noresh Chandra Sinha* on behalf of the judgment-debtor appellant. The learned Chief Justice, however, held that an application need not be in writing and that a verbal application is sufficient to extend the period for execution of the decree provided it is a definite application in order to oppose an application of the judgment-debtor to set aside the execution proceedings. There can hardly be any doubt that the decree-holders are entitled to regard any step taken by them to remove the obstacle thrown by the judgment-debtor in their way to the realization of their decree as a step-in-aid of execution.

The appeal is, therefore, dismissed with costs.

*Appeal dismissed.*

## REVISIONAL CRIMINAL.

*Before Adami and Bucknill, J.J.*

GUHI MIAN

D.

KING-EMPEROR.\*

1924.

Nov. 7, 13.

*Code of Criminal Procedure, 1898 (Act V of 1898), section 162—Statement by witness in court—whether he can be asked whether he had made that statement to the police.*

Where, during a trial, a witness makes a statement, he may be asked by the prosecution whether he had made that statement to the police, and the investigating police officer may also be asked whether the witness had made that statement to him.

\* Criminal Revision no. 541 of 1924, from an order of G. J. Monahan, Esq., I.C.S., Sessions Judge of Monghyr, dated 3rd September, 1924, affirming an order of B. Raghunandan Pandey, Deputy Magistrate of Monghyr, dated 22nd December, 1923.

(1) M. A. 281 of 1923 (unreported).