

128 feet there were several patches, and that the theory that Pardip could not have been injured in Sheodhar's house gains some support from the fact that there are no blood marks between Sheodhar's house and the spot B. In my opinion the evidence in the case is consistent with the theory and on the whole we must hold the learned Sessions Judge's view of the guilt of the accused to be correct.

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A point has been made with regard to the conviction of Ghanshyam. It is said that as he gave only the order to beat he cannot be held liable for the results of the act of Ramkhusi and that at most he can be convicted only of the offence of abetting Ramautar in voluntarily causing hurt; but having regard to the fact that Ramkhusi was armed with a spear and Ramautar was armed with a lathi and that Ghanshyam gave the general order to beat, I think it is a reasonable inference that he intended all the results that followed. Ramkhusi would not have attacked Pardip if it had not been for that order and this is the learned Sessions Judge's view and in my opinion it is correct.

The result, therefore, is that the convictions and sentences are affirmed and the appeals are dismissed.

WORT, J. I agree.

APPELLATE CIVIL.

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

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v.

RAJ KUMAR RAI.*

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April, 26

Execution of Decree—execution restrained by injunction—decree set aside and subsequently restored—limitation.

*Appeal from Appellate Order no. 314 of 1926, from a decision of S. B. Dhavle, Esq., I.C.S., District Judge of Monghyr, dated the 14th December, 1926, confirming a decision of Babu Badri Narain Ray, Munsif of Begusarai, dated the 5th December, 1925.

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Some of the parties against whom a decree had been passed having instituted a suit to set aside the decree, obtained an injunction restraining the decree-holder from executing it. The suit succeeded in the trial court and the decree was set aside on the 26th August, 1922. On the 6th April, 1925, the decision in the second suit was reversed. On the 24th June, 1925, the decree-holder in the first suit made the present application to execute his decree. The last step-in-aid of execution of that decree had been taken on the 1st September, 1921.

Held, that inasmuch as, between 26th August 1922, and the 6th April, 1925, there was no decree in existence, the present application was within time.

Appeal by the judgment-debtors from an appellate order confirming an order of the original court which had overruled the judgment-debtor's objection to the decree-holder's application for execution of his decree and ordered the execution to proceed.

The facts of the case material to this report are stated in the judgment of Dawson Miller, Chief Justice.

S. N. Roy (with him *K. P. Singh*), for the appellants.

Anand Prasad, for the respondent.

DAWSON MILLER, C. J.: This appeal, in my opinion, must be dismissed. The question is whether the decree-holders are entitled to execute their decree or whether the execution is barred by limitation. The last step in aid of execution was taken on the 1st September, 1921, and the present execution proceedings were filed on the 24th June, 1925. Were that all it is clear that the present execution petition would be considerably out of time. It appears, however, that the decree which it is sought to execute was the subject of a suit by certain of the parties whose interests were affected by that decree and on the 16th September, 1921, they having instituted a suit to set aside the decree on the ground that it was null and void, an injunction was granted restraining the present decree-holders from executing it. On the

26th August, 1922, that suit succeeded and the whole decree was set aside as being null and void. Therefore the execution proceedings were restrained by injunction from the 17th September, 1921, that is to say 17 days after the last step-in-aid of execution. That injunction no doubt expired when the plaintiffs in the suit to set aside the decree obtained their decree setting aside the previous decree on the 26th August, 1922, but from that date onwards up to the 6th April, 1925, there was no decree at all which the present decree-holders could execute for by the previous decision it had been declared null and void. On the 6th April, 1925, however, the order setting aside the decree which it is now sought to execute was reversed and from that date the decree having been restored it was open to the decree-holders to execute it. They did file the present proceedings on the 24th June, 1925. Therefore they are clearly not out of time for from the 17th September, 1921, up to the 6th April, 1925, they were either restrained by injunction from executing their decree or there was no decree whatsoever to execute. In these circumstances it is quite clear that time did not run between the 17th September, 1921, and the 6th April 1925. The Limitation Act is always subject to this, in so far as it applies to execution, that there must be some decree in existence which you can in fact execute. In the present case, for the period which I have mentioned between August 1922 and April 1925 there was no decree which could be executed at all and the only period during which execution could take place was the short period between the 1st September, 1921, and the 17th September in the same year and the 6th April, 1925, and the 24th June, 1925, when in fact the execution case was filed. This was the view taken by the Munsif and by the District Judge on appeal. In my opinion it is clearly the right view. This appeal must be dismissed with costs.

Ross, J. I agree.

Appeal dismissed.

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