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and he opened an arhat for flour and ghee, in the year of the above deed and for these purposes he executed the above deed (mortgage bond)."

All this business seems to be of a speculative character and certainly a karta, in my opinion, cannot bind the minors by entering into a new venture of such a character. I think, therefore, that the plaintiff's suit must fail as to the subsequent advances.

Decree modified.

APPELLATE CIVIL.

Before Kulwant Sahay and Macpherson, JJ.

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JAGANNATH DAS

v.

CHAMU RAGHUNATH KHUNTIA.*

Execution—pending application, amendment of, when decree becomes barred by limitation.

An application for amendment of a pending application for execution, made after the decree sought to be executed had become barred by limitation, cannot be entertained.

Asgar Ali v. *Troilokya Nath Ghose*(1), and *Hayatunnessa Chowdhurani* v. *Achia Khatun*(2), followed.

Gnanendra Kumar Rai Choudhury v. *Sree Sree Shyam Sundar Jiu*(3), not followed.

Bishnudeo Sahu v. *Mahadeo Prasad Sahu*(4), and *Rai Bahadur Ram Sumeron Prasad* v. *Ram Bahadur*(5), distinguished.

*Circuit Court, Cuttack. Appeal from Appellate Order no. 10 of 1928, from an order of H. R. Meredith, Esq., I.C.S., District Judge of Cuttack, dated the 20th January, 1928, confirming an order of Babu Brajendra Kumar Ghosh, Subordinate Judge of Cuttack, dated the 1st August, 1927.

(1) (1890) I. L. R. 17 Cal. 681, F. B.

(2) (1923) I. L. R. 50 Cal. 748.

(3) (1918) 27 Cal. L. J. 398.

(4) (1927) 8 Pat. L. T. 771.

(5) (1923) 71 Ind. Cas. 741.

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Appeal by the decree-holders.

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

B. K. Ray, for the appellants.

B. N. Das, for the respondent.

KULWANT SAHAY, J.

KULWANT SAHAY, J.—The only question for decision is whether an application for amendment of a pending application for execution could be entertained after the decree had become barred by limitation. The decree under execution was a money decree passed on the 18th February, 1915. After various applications for execution the last application was made on the 14th January, 1927, and the prayer was to proceed by attachment and sale of certain moveable properties belonging to the judgment-debtor. No moveables were found and on the 1st August, 1927, an application was made giving a list of the immoveable properties sought to be proceeded against and praying that the original application might be amended and the properties given in the list might be proceeded against.

The learned Subordinate Judge held that the amendment could not be allowed and the properties set out in the list could not be proceeded against as the decree had become barred by twelve years limitation on the 18th February, 1927.

The learned District Judge on appeal has affirmed the order of the Subordinate Judge.

It is contended by the appellant that the view taken by the Courts below was wrong, and reliance is placed upon *Gnanendra Kumar Rai Chaudhury* v. *Sree Sree Shyam Sundar Jiu and Lakshmi Thakurani*[1] and upon two decisions of the Patna High Court in *Bishundeo Sahu* v. *Mahadeo Prasad Sahu*[2] and *Rai Bahadur Ram Sumeron Prasad* v. *Ram Bahadur*[3]. On behalf of the respondent reference is

(1) (1918) 27 Cal. L. J. 398. (2) (1927) 8 Pat. L. T. 771.
(3) (1923) 71 Ind. Cas. 741.

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made to the Full Bench decision of the Calcutta High Court in *Asgar Ali* v. *Troilokya Nath Ghose*(1) and *Hayatunnessa Chowdhurani* v. *Achia Khatun*(2), and it is contended that the two Patna cases of *Bishundeo Sahu* v. *Mahadeo Prasad*(3) and *Rai Bahadur Ram Sumeran Prasad* v. *Ram Bahadur*(4) do not lay down the proposition contended for by the appellant. In my opinion the respondent's contention is sound and the decisions of the Courts below are correct.

Gnanendra Kumar Rai Choudhury v. *Sree Sree Shyam Sundar Jiu and Laksmi Thakurani*(5) was a case in which a rent decree was passed on the 28th November, 1911, and the execution was applied for on the 23rd November, 1914. Certain properties were set out in the list annexed to the execution petition, but it was discovered that execution could not proceed against those properties; and on the 14th January, 1915, an application was made by the decree-holder with a prayer to accept a further list of the properties and to proceed against those properties. It was held by Teunon and Newbould, JJ. that the list should be taken as a part of the original application under the provisions of Order XXI, rule 17(2), of the Code, or if a fresh application were at all necessary that that application should be treated as one made in continuance of the application first presented on the 23rd November, 1914. The question that the application of the 14th January, 1915, was filed after the decree had become barred by limitation was not considered at all and if this decision be held to be an authority that an application for amendment of a pending application filed after the period of limitation can be entertained, this view is directly opposed to the decision of the Full Bench in *Asgar Ali* v. *Troilokya Nath Ghose*(1) to which no reference was made by the learned Judges.

(1) (1890) I. L. R. 17 Cal. 631, F. B.
(2) (1923) I. L. R. 50 Cal. 748.
(3) (1927) 8 Pat. L. T. 771.
(4) (1923) 71 Ind. Cas. 741.
(5) (1918) 27 Cal. L. J. 898.

In *Hayatunnessa Chowdhurani* v. *Achia Khatun*(1) the facts were similar to the facts of the present case. There also an application was made in which certain properties were mentioned against which the decree-holder wanted to proceed. Subsequently he put in a petition asking for permission to be allowed to add several other properties to the list given in his original application. This was after the period of limitation had expired, and it was held that the decree-holder could not be allowed to do so. The Full Bench decision in *Asgar Ali* v. *Troiloikya Nath Ghose*(2) was followed and the learned Judges refused to follow *Gnanendra Kumar Rai Choudhury* v. *Sree Sree Shyam Sundar Jiu and Laksmi Thakurani* (3) which they said arose under different circumstances but which really was contrary to the decision in the Full Bench case.

As regards the two Patna decisions in *Bishundeo Sahu* v. *Mahadeo Prasad Sahu*(4) and *Rai Bahadur Ram Sumeran Prasad* v. *Ram Bahadur* (5) to both of which I was a party, I am of opinion that these cases do not support the contention of the appellant. In *Bishundeo Sahu* v. *Mahadeo Prasad Sahu*(4) the decree under execution was a rent decree passed on the 31st May 1921. An application was made for execution on the 7th June, 1923, which was dismissed. A second application was made on the 30th May, 1924, in which five plots of land were sought to be attached and sold. This application was dismissed for default on the 23rd September, 1924, but was restored on the 6th December, 1924, and 15th May, 1925 was fixed for sale. Six days before the date fixed for sale, namely, on the 9th May, 1925, a claim case filed by a third person was allowed and the execution case was dismissed. Thereafter an application was made on the 8th June, 1925, praying for continuance of the

(1) (1923) I. L. R. 50 Cal. 743.
(2) (1890) I. L. R. 17 Cal. 681 F. B.
(3) (1918) 27 Cal. L. J. 398.
(4) (1927) 8 Pat. L. T. 771.
(5) (1925) Ind. Cas. 741.

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original application which had been dismissed on the 9th May, 1925, and giving a list of other properties against which the decree-holder wanted the Court to proceed. It was conceded by the learned Advocate for the judgment-debtor in that case that if this application of the 8th June, 1925, giving a fresh list of the properties had been filed before the 15th May, 1925, the date fixed for sale, it could have been entertained, and the original application could have been amended and execution could have proceeded against those additional properties. Having regard to the fact that this point was conceded by the learned Advocate for the judgment-debtor the question whether the amendment could be allowed after the period of limitation was not considered at all and all that was considered was whether there were sufficient reasons for the decree-holder not taking any steps for giving fresh properties between the 9th May 1925 when the claim case was allowed and the 15th May, 1925, the date fixed for sale, and it was held that the application made on the 8th June, 1925, was made with due diligence and ought to have been allowed. The question raised in the present case was not raised and decided in that case.

In *Rai Bahadur Ram Sumeran Prasad* v. *Ram Bahadur*(1) the decision proceeded upon the view that there was no provision of law which prevented a Court from entertaining concurrent applications for execution of the same decree. The decree under execution in that case was made in 1915, and the application for execution was made within a year, namely, on the 20th May, 1915. Some property belonging to the judgment-debtors was sold leaving a balance under the decree still due. There were applications filed for setting aside the sale and those applications were pending and the sale had not been confirmed. In the meantime on the 11th July, 1922, the decree-holders filed a petition stating that they had learnt that an

(1) (1923) 71 Ind. Cas. 741.

amount of money realised upon a decree in favour of the judgment-debtors was in deposit in the Court of the Subordinate Judge and praying that this sum might be attached and paid to the decree-holder in satisfaction of their debt. The Subordinate Judge rejected this application on the ground that a previous application for execution was still pending. It was held that the pendency of one application for execution did not debar the decree-holder from presenting another application and that two simultaneous executions could proceed at the same time. Mullick, J. in the course of the judgment observed, "If, then, it is open to the decree-holder to file a fresh application, I see no reason why the Court cannot allow the amendment of the application already filed, while the execution case is still pending, by the addition of other properties to the list of properties sought to be attached."

Reliance is placed by the learned Advocate for the appellant upon this observation of Mullick, J. This, however, in no way goes to the length of holding that the second application for amendment could be entertained even if filed beyond the period of limitation. It proceeded on the assumption that on the date the application for amendment had been made a fresh application for execution could have been entertained implying thereby that the decree was still subsisting and had not been barred by limitation. It is contended that the fact that a previous application for execution was pending in which an amendment was sought to be made showed that the decree was still subsisting and had not been barred; but this in my opinion does not entitle the decree-holder to apply to the Court to proceed against the other properties, and the principle upon which amendments of pending execution petitions are allowed is, in my opinion, based upon the fact that a substantive application for execution could have been entertained on the date the application for amendment was filed. I am of opinion that an application for amendment of a pending

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application for execution made after the decree sought to be executed had become barred by limitation cannot be entertained, and the view taken by the Courts below was correct.

This appeal is dismissed with costs.

MACPHERSON, J.—I agree.

S. A. K.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Macpherson and Kulwant Sahay, JJ.

1928.

Dec., 7.

KELU PATRA

v.

ISWAR PARIDA.*

Criminal Revisional Jurisdiction—Limitation—application after sixty days—High Court, practice of, not to interfere—absence of exceptional circumstances—Sessions Judge, proceedings before—period, whether excluded—reasonable time, petitioner must come within.

The High Court, as a general practice, will not entertain, in the absence of the most exceptional circumstances, an application in its criminal revisional jurisdiction after the expiry of 60 days from the date of the decision or order impugned. A fresh period of sixty days does not accrue from the date when the Sessions Judge refuses to make a reference under section 438, Code of Criminal Procedure, 1898.

The period of 60 days is intended to cover also proceedings of normal length before the Sessions Judge, and it will not, ordinarily, be extended because the petitioner negligently or deliberately delayed to move the Sessions Judge till the period had nearly expired, nor, in any case, beyond the period occupied in the Session Court. In all cases the petitioner must come to the High Court within a reasonable time of the order of the Sessions Judge, and ought to do so expeditiously.

**Circuit Court, Cuttack.* Criminal Revision no. 48 of 1928, from an order of Babu B. K. Adhikary, Deputy Magistrate of Puri, dated the 4th May, 1928, an application against which was dismissed by H. R. Meredith, Esq., I.C.S., Sessions Judge of Cuttack, by his order dated the 6th July, 1928.