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expressed this view in an earlier decision of his own in *Gopal Tewari* v. *Ramdhari Pandey*(1). It seems, however, quite clear that the distinction has been recognised by many of the other High Courts that the decision of their Lordships of the Privy Council dealt only with Article 183. Moreover the fact that the order for transfer is in the nature of a ministerial act has nothing whatever to do with the material question for our decision as to whether that order was a step-in-aid of execution. In my opinion the decision of this Court in *Ramchandra Marwari* v. *Krishna Lal Marwari*(2) was not affected in the least by the decision of the Privy Council and the order for transfer was a step-in-aid of execution and the subsequent proceedings by the decree-holder were consequently within time under Article 182, clause (5).

For this reason I would dismiss this appeal. As there has been no appearance on behalf of the respondent the appeal will be dismissed without costs.

JAMES, J.—I agree.

Appeal dismissed.

J. K.

APPELLATE CIVIL.

1936.

November, 30.

Before Wort, J.

MAGAN LAL MARWARI

v.

SITARAM PANNA LAL.*

Limitation Act (Act IX of 1908), Article 182—amendment made after the decree was dead—limitation runs from date of amendment—executing court, if can go behind the order of amendment—res judicata.

* Appeal from Appellate Order no. 130 of 1936, from an order of R. B. Beevor, Esq., I.C.S., District Judge of Bhagalpur, dated the 24th of February, 1936, confirming an order of Babu D. Prasad, Munsif, dated the 11th of January, 1936.

(1) (1934) A. I. R. (Pat.) 662.

(2) (1922) I. L. R. 1 Pat. 328.

Where a decree was amended more than three years after it was passed and the judgment-debtor objected to the execution of the amended decree on the ground that the order of amendment was bad in law,

Held, that it was not open to the executing court to go behind the order of amendment and to enquire if the decree was really barred on the date of amendment or not. The question was res judicata.

Nagendra Nath Dey v. *Suresh Chandra Dey*(1), *Allada Lakshmikanta Rao* v. *Naddella Ramayya*(2), *Durga Prasad Das* v. *Kedarnath Nayek*(3) and *Musammat Bhagwati Kuer* v. *Narsingh Narayan Singh*(4), followed.

Raja Kalanand Singh v. *Rajkumar Singh*(5), not followed.

Appeal by the judgment-debtor.

The facts of the case material to this report are set out in the judgment of Wort, J.

K. P. Sukul, for the appellant.

Bindeshwari Prasad, for the respondent.

WORT, J.—The point for decision in this case is an attractive one and at first appeared to be one of some difficulty. But in my judgment it is concluded both by principle and authority.

The judgment-debtor is the appellant before this Court and objected under section 47 of the Code of Civil Procedure against the execution of a decree which was made in the first instance on the 21st of August, 1930. More than three years after the date of the decree an application for amendment was made on the 5th of January, 1935, and then the application for execution on the 13th of May, 1935, out of which this appeal arises. Mr. Beevor, the learned District Judge, relying upon the observations made by me in

(1) (1932) L. R. 59 Ind. Ap. 283.
(2) (1934) 67 Mad. L. J. 904.
(3) (1929) A. I. R. (Cal.) 650.
(4) (1930) 11 Pat. L. T. 181.
(5) (1917) 2 Pat. L. J. 286.

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a judgment reported as *Musammat Bhagwati Kuer* v. *Narsingh Narayan Singh*(1) has come to the conclusion that the application was not barred by limitation. It is true that my observations are in a sense mere obiter as the facts of the case upon which reliance was placed were that the application for amendment was made before the decree had become barred by limitation. But in the view I now take the observations in the former case were warranted both on principle and authority as I have already stated.

Article 182 of the Limitation Act provides for various starting points of limitation for the execution of decree, and under clause (4) of the third column it is provided that where a decree has been amended, the starting point is the date of amendment. Now, the words of the Article are quite unqualified—it does not speak of any particular form of amendment, whether the amendment is necessary or otherwise, whether the decree is capable of execution without the amendment; it does not qualify, as I have said, the matter of amendment in any way. There is a decision of this Court which was not relied upon at the Bar in *Raja Kalanand Singh* v. *Rajkumar Singh*(2) where this point has been discussed. There Chapman, J. and Roe, J. decided that an action was barred by limitation as the nature of the amendment was such as not to give a fresh point for limitation. The learned Judges in that case, as I have indicated, discussed the nature of the amendment and decided the case accordingly. Two learned Judges of the Calcutta High Court have held a contrary view in the decision in *Durga Prosad Das* v. *Kedarnath Nayek*(3) and the observations which the learned Judges in that case made were that an executing court does not sit as a Court of appeal over the Court which has made the decree or which has made the amendment, but only to see whether the decree has been amended in order

(1) (1930) 11 Pat. L. T. 181.
(2) (1917) 2 Pat. L. J. 286.
(3) (1929) A. I. R. (Cal.) 650.

to decide whether the application for execution is barred by limitation. The Madras High Court in the case of *Allada Lakshmikanta Rao* v. *Naddella Ramayya*(1) have come to the same conclusion relying upon a decision of their Lordships of the Judicial Committee of the Privy Council reported as *Nagendra Nath Dey* v. *Suresh Chandra Dey*(2). The same Article of limitation was in question in that case. But the matter to be decided was whether execution was barred by limitation and whether the date from which limitation ran was from the date of an appeal which had been preferred in the case. Their Lordships of the Judicial Committee in the opinion expressed by Sir Dinshah Mulla made this observation on the argument addressed that the nature of the appeal altered the question—"There is, in their Lordships' opinion, no warrant for reading into the words quoted any qualification either as to the character of the appeal or as to the parties to it; the words mean just what they say. The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions equitable considerations are out of place and the strict grammatical meaning of the words is, their Lordships think, the only safe guide." Likewise, the learned Judges of the Madras High Court, relying upon the decision to which I have just referred, have held that it was immaterial what was the nature of the amendment—whether the Court had jurisdiction to make it or not: in other words, the question is in a sense determined on the principle of res judicata. When the application for amendment was made, it would have been a complete answer by the judgment-debtor to the application that the decree was already dead in the sense of its being barred by limitation, and the amendment having been made it must be presumed that that question had no substance. As held by the learned

(1) (1934) 67 Mad. L. J. 904.
(2) (1932) L. R. 59 Ind. App. 283.

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Judges of the Madras High Court, it was not competent for the Court below in this case to sit in appeal on the decision of the Court amending the decree. In so far as the decision of this Court reported as *Raja Kalanand Singh* v. *Rajkumar Singh*(1) appears to hold that the Court may look into the nature of the amendment, I have no hesitation in saying that it was overruled by the decision of their Lordships of the Judicial Committee of the Privy Council in *Nagendra Nath Dey* v. *Suresh Chandra Dey*(2). On a parity of reasoning, that is to say, if it is impossible to look into the nature of the appeal under Article 182, it is equally irrelevant to look into the nature of an amendment. In the case before the Privy Council the appeal was apparently irregular and incompetent and the persons affected by it were not parties and the appeal did not imperil the whole decree. In spite of that their Lordships gave full weight to the plain meaning of the word 'appeal' contained in Article 182.

In my judgment the decision of the learned Judge in the Court below was right, his judgment must be affirmed and this appeal dismissed with costs.

Appeal dismissed.

J. K.

APPELLATE CIVIL.

1936.

December 9.

Before Courtney Terrell, C.J. and James, J.

BANKANIDHI TANTRA

v.

GODIPATNA CO-OPERATIVE SOCIETY.*

Limitation Act, 1908 (*Act IX of* 1908), *section* 20—*Limitation (Amendment) Act*, 1927 (*Act I of* 1927),—*payment made after* 1928—"*as such*", *whether redundant.*

* Circuit Court, Cuttack. Appeal from Appellate Order no. 7 of 1936, from an order of A. N. Bannerji, Esq., District Judge of Cuttack, dated the 31st December, 1935, reversing an order of Babu Badrinarayan Ray, Munsif, 1st Court of Cuttack, dated the 4th June, 1935.

(1) (1917) 2 Pat. L. J. 286.

(2) (1932) L. R. 59 Ind. App. 283.