

1937.

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believed and in the circumstances, therefore the entry in the record-of-rights should have prevailed and the defendant should have been held to have held his land rent-free and the plaintiffs suit should accordingly have failed.

For these reasons I would allow the appeal, set aside the judgment of the learned Judge of this Court and restore the judgment of the trial court and the first appellate court with costs throughout.

JAMES, J.—I agree.

Appeal allowed.

J. K.

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February,
3.

LETTERS PATENT.

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

BHAGWAT SAHAY

v.

RAM SUKRIT RAM.*

Limitation Act, 1908 (Act IX of 1908), Article 182(5)—step-in-aid of execution—order for transfer of decree, whether is.

An order for the transfer of a decree for execution is a step-in-aid of execution within the meaning of Article 182, clause (5) of the Limitation Act.

Ramchandra Marwari v. Krishna Lal Marwari(1), followed.

Gopal Tewari v. Ramdhari Pandey(2), not followed.

Banku Behari Chatterji v. Naraindas Dubt(3), distinguished.

Appeal by the judgment-debtor.

* Letters Patent Appeal no. 7 of 1936, from a decision of the Hon'ble Mr. Justice Wort, dated the 24th January, 1936.

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

(2) (1934) A. I. R. (Pat.) 662.

(3) (1927) 54 I. A. 129.

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

D. N. Verma, for the appellant.

No one for the respondent.

COURTNEY TERRELL, C.J.—In this case the decree-holder obtained his decree on the 12th June, 1931. On the 8th July, 1932, on the application of the decree-holder, an order was made for transfer of the decree from the court in which it was granted to the court of the District Judge of Shahabad for execution. On the 5th July, 1935, the decree-holder took the next step by filing an application for the execution of the decree in the court of the District Judge of Shahabad.

The question for our decision is whether the order for the transfer made on the 8th July, 1932, was a step-in-aid of execution. The Munsif before whom this matter first came decided that it was a step-in-aid of execution and, therefore, the application by the decree-holder filed on the 5th July, 1935, was within time under Article 182, clause (5). From this decision the judgment-debtor appealed to the District Judge contending that the application for execution on the 5th July, 1935, was out of time. The appeal was summarily dismissed and the judgment-debtor appealed to the High Court. The learned Judge before whom the matter came held that he was bound by the decision of this Court in *Ramchandra Marwari v. Krishna Lal Marwari*(¹) to the effect that the order for transfer was properly termed a step-in-aid of execution within the meaning of Article 182, clause (5) but he gave leave to appeal in Letters Patent because he was of opinion that a decision of their Lordships of the Privy Council in *Banku Behari Chatterji v. Naraindas Dutt*(²) had in effect overruled that decision and the learned Judge had himself

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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.

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.

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