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SECRETARY
OF STATE
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IN COUNCIL
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J.

To accept the interpretation of the learned District Judge in the present case would entail reading into the section a qualification that in a suit against the Secretary of State notice is not required where no relief is sought as against him. It is impossible to insert these words in the section or to read the section as if these words found a place in it. The words of the section are perfectly unambiguous that no suit shall be instituted against the Secretary of State until two months after notice of the suit has been served upon him. There is no qualification of this requirement and no qualification can be read into the section.

The order of the learned District Judge remanding the case to be disposed of on the merits will, therefore, be varied to this extent, that the name of the Secretary of State will be expunged from the action.

The appellant is entitled to his costs in this Court and in the court below.

VARMA, J.—I agree.

Appeal allowed.

APPELLATE CIVIL.

Before Khaja Mohamad Noor and Saunders, JJ.

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September,
17.
December,
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JOKHIRAM SAGARMAL

v.

CHAMAN CHLOUDHRY.*

Santal Parganas Act, 1855 (Act XXXVII of 1855), section 1, clause (2)—Santal Parganas Settlement Regulation, 1872 (Reg. III of 1872)—Santal Parganas Justice Regulation, 1893 (Reg. V of 1893), section 27—Santal Parganas Judicial Rules—Rules 35 and 36, if ultra vires—rule that

*Appeal from Appellate Orders nos. 323 and 324 of 1934, from an order of Muhammad Ibrahim, Esq., Subordinate Judge, Bhagalpur, dated the 4th July, 1934, affirming the order of Babu A. C. Banerji, Munsif of Banka, dated the 16th March, 1934.

execution shall be taken within one year, if contravenes Article 182 of the Limitation Act—Limitation Act, 1908 (Act IX of 1908), Article 182—rule making decree void, if a question of substantive law or procedure—“ pending proceeding ” in rule 36, meaning of—pending proceeding, whether includes proceedings for transfer of decree—Code of Civil Procedure, 1908 (Act V of 1908), section 48.

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Two instalment decrees passed by a Santal Court had after part satisfaction been transferred to the Munsif's Court at Banka for execution. The judgment-debtor objected to the execution on the ground that the decrees were barred under Rule 35 of the Judicial Rules framed under section 27 of the Santal Parganas Justice Regulation, 1893, and in the other case it was also contended that the decree had become void under the said Rule.

Held, that the Limitation Act being one of the enactments that was in force in the Santal Parganas, rule 35 of the Judicial Rules, laying down that execution shall be taken within one year, was inconsistent with Article 182 of the Limitation Act which prescribed 3 years' limitation for execution of decrees and was ultra vires.

Held, also that in the other case the decree had not become void for Rule 35 was subject to the proviso contained in Rule 36 which makes an exception in favour of a pending proceeding. A proceeding to have a decree transferred for execution is a proceeding within the meaning of rule 36.

Obiter dictum : It is doubtful whether the Local Government is competent to make a rule prescribing the life of a decree. This is a matter of substantive law and not of procedure.

Appeal by the decree-holders.

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

S. N. Bose, for the appellants.

Anand Prasad, for the respondents.

KHAJA MOHAMAD NOOR, J.—These two appeals arise out of two proceedings for execution of decrees

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started in the Court of the Munsif of Banka. The decree-holders are different in the two cases, but the judgment-debtors are common. The facts are similar and the question involved in both of them is exactly the same, namely, whether the application for execution in each case was barred by limitation. The decrees were passed in suits of below Rs. 1,000 in value by a Deputy Collector of Deoghar, an officer appointed by the local Government under section 2 of Act XXXVII of 1855. The courts of these officers are not regular civil courts. They are governed by procedures of their own prescribed by the local Government under their powers of control and direction. They are commonly known as 'Santal Courts'. Under the schedule to Regulation III of 1872 some provisions of the Code of Civil Procedure relating to the transfer of decrees are applicable to suits tried by these officers. The whole of the Code, however, is applicable to suits of over Rs. 1,000 in value which are tried by Courts established under the Bengal, Agra and Assam Civil Courts Act (XII of 1887). The two decrees in question were transferred by the Court which passed them to the Munsif of Banka for execution. Objections were taken by the judgment-debtors that the executions were barred under the special rules of limitation applicable to these decrees and being barred in the Santal Parganas could not on transfer be executed outside. The objection has prevailed before both the lower Courts, and the decree-holders have preferred these miscellaneous appeals.

Now the rules relied upon by the judgment-debtors are rules 35 and 36 of judicial rules to be found at page 103, etc., of the Santal Parganas Manual. They run thus:

" 35. Execution of a decree shall be taken out within a year; and if the decree is not satisfied, execution may again be taken out at any time so long as it remains in force; provided that, if there is a return of no effects to three successive orders of attachment, the decree shall become void unless the Court executing it is satisfied that the judgment-debtor is fraudulently concealing property within its jurisdiction. If

more than a year has elapsed since the date of the last application for execution, no action shall be taken until the judgment-debtor has been served with a notice calling on him to show cause against it."

" 36. A decree shall ordinarily become void, except as regards pending proceedings, at the end of three years from the date of the decree, or where an appeal has been filed, from the date of the appellate decree."

Proviso (b) to this rule runs thus:—

" Where a decree permits payments by instalments or after a period of grace, the limitation of three years will commence from the date of the first default or from the conclusion of the period of grace allowed under the decree."

In one case (M.A. 323 of 1934) the decree which was passed on 16th September, 1929, was an instalment one. The first fourteen instalments were paid up but only a portion of the fifteenth instalment which was due on 14th January, 1930, was paid and thus there was a default on that date and thereafter. The application for transfer of the decree from Deoghar to Banka was made on the 17th of January, 1932, and order for transfer was passed on 20th December, 1932. The application for execution was made on 15th November, 1933. In the other case (M.A. 324 of 1934) also the decree was passed on 26th November, 1929, and was payable in instalments. A default was made in the payment of the instalment due on the 28th August, 1931. Application for transfer was made on 11th February, 1933, order for transfer was passed on 16th February, 1933, and the application for execution was passed at Banka on 15th November, 1933.

The judgment-debtors contended that executions not having been taken out within one year of default they were barred under rule 35. The contention of the decree-holders, on the other hand, has been that the law of limitation being the law of procedure the special rules of limitation prescribed for the ' Santal Courts ' of the Santal Parganas are not applicable when the decrees are being executed at Banka, and

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that the present execution applications are governed by Article 182 of the Indian Limitation Act. The legality of the rules has also been questioned before us.

I doubt whether the first contention is sound, especially when the decrees when transferred had already become barred by limitation under the rules. A court to which a decree is sent for execution executes it on behalf of the Court which passed it. The latter court does not lose its connection with the decree. The executing court has, after the completion of the execution, to send to the Court which passed the decree a certificate as to how the decree was executed and if it fails to execute it the reason of such failure (section 41 of the Code of Civil Procedure). Once such certificate is sent, the executing court's jurisdiction to execute the decree ends and the court which passed it may deal with it as it thinks fit. In both these cases, if one year's rule of limitation is applicable, the execution had become barred long before the decree-holders applied for transfer of the decrees to Banka, and it may be argued that the order of transfer was itself illegal. The case will perhaps be different if a decree be transferred before the expiration of the special period of limitation. Some decisions were cited to show that the law of limitation applicable for the execution of the decrees is the law applicable to the court where execution is taken. As, however, in my opinion, the appeals must succeed on the second ground it is not necessary to examine those cases.

Mr. S. N. Bose on behalf of the appellants has contended that the Santal Parganas Judicial Rules 35 and 36 are ultra vires and that the Banka court was not entitled to recognize these rules and to hold the executions to be barred by limitation. This point does not seem to have been taken before the Courts below, but being a point of law and not being dependent upon any question of fact, we have allowed it to be taken in the second appeals.

Now, Schedule I of Regulation III of 1872 specifies the enactments which shall be deemed to be in force in the Santal Parganas. I have said that a very few sections of the Code of Civil Procedure are in force in respect of suits of value not exceeding Rs. 1,000, though the whole of it is in force in respect of suits of higher value. The Limitation Act, however, is in force in its entirety, as is clear from the Schedule and it governs suits and proceedings before the officers appointed by the local Government. The Santal Parganas Judicial Rules purport to have been framed under section 1, clause (2) of Act XXXVII of 1855 and section 27 of the Santal Parganas Justice Regulation of 1893 (Act V of 1893). Section 1, clause (2), of the Act of 1855 is to the effect that—

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“The said districts shall be placed under the superintendence and jurisdiction of an officer or officers to be appointed in that behalf by the Lieutenant-Governor of Bengal, and such officer or officers shall be subject to the directions and control of the said Lieutenant-Governor.”

These Judicial Rules have been framed in exercise of the powers of direction and control given to the local Government. But section 27 of the Civil Justice Regulation of 1893 specifically prescribes that that direction must be consistent with that Regulation and with all other enactments for the time being in force in the Santal Parganas. The section runs thus:—

“Any directions which the Lieutenant-Governor of Bengal may issue under section 1, clause 2, of Act XXXVII of 1855 must be consistent with this Regulation and with all other enactments for the time being in force in the Santal Parganas.”

One year's limitation for execution of decree is obviously inconsistent with Article 182 of the Limitation Act which relates to the execution of decrees and, therefore, in my opinion rule 35 to that extent is ultra vires and has got no binding effect upon courts. Therefore, Article 182 of the Limitation Act applies in these cases and, therefore, the execution in Miscellaneous Appeal no. 324 of 1934, which was

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filed after one year of the default but within three years of it, is not barred by limitation.

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In Miscellaneous Appeal no. 323 of 1934 the application for execution was filed more than three years after the date of the default when, according to rule 36 referred to above, the decree had become void. This rule does not contravene any provision of the Indian Limitation Act. The life of a decree is not governed by the Limitation Act. There is a corresponding provision in the Code of Civil Procedure (section 48) which provides that no order for execution of a decree shall be passed after twelve years of the date of the decree or the date of default if the payment under the decree is to be made on a subsequent date. This provision of the Code of Civil Procedure does not apply in the Santal Parganas to suits of Rs. 1,000 in value or less. Therefore, it may be said that rule 36 is not inconsistent with any law in force in the Santal Parganas. It is, however, doubtful whether it was competent for the local Government to frame such a rule. Strictly speaking, prescribing a life for a decree appertains to substantive law and not the law of procedure. Section 48 of the Code of Civil Procedure bars execution, but does not make the decree void. In other words, the right subsists, but the remedy is barred. There is a good deal of difference between the two. Apart from this, section 1, clause (2), of Act XXXVII of 1855 gives power to the local Government to give direction to the officers and to control them. It is doubtful whether declaring a decree to be void comes within the term 'direction' and 'control'. However, it is not necessary for the purposes of this case to discuss this question in detail. The decree in this case was transferred before the expiry of three years from the date of default. It had not become void when it was transferred to Banka. It was then in full force and thereafter the execution in the Banka court will be governed by the law which is applicable to that Court. Furthermore, rule 36 which makes a decree void after

three years makes an exception in favour of a pending proceeding. It is not clear what the word "proceeding" means. It need not be execution proceeding. A proceeding to have a decree transferred may be said to be a proceeding and therefore the execution of the decree may be in continuation of such a proceeding. At any rate, the decree had not, even according to the rule, if the rule is legal, become void when it came for execution to Banka. In my opinion the execution is therefore valid.

I would, therefore, allow the two appeals, set aside the orders of the Court below and direct that the executions shall proceed. In the circumstances of the case the parties will bear their own costs throughout.

SAUNDERS, J.—I agree.

Appeals allowed.

Cases remanded.

APPELLATE CIVIL.

Before Agarwala and Varma, JJ.

NILKANTHA NARAYAN TEWARI

v.

DEBENDRA NATH RAY.*

Provincial Insolvency Act, 1920 (Act V of 1920), sections 2, 28(2) and 59—Receiver in insolvency, if can sell the share of the insolvent's son—joint Hindu family—"property", meaning of, within section 2(1)(a) of the Act.

The powers of a Receiver-in-insolvency are defined by the statute and that power is to sell the property of the insolvent which vests in the Receiver by reason of the order of adjudication.

* Appeal from Appellate Decree no. 322 of 1932, from a decision of S. P. Chattarji, Esq., Officiating Judicial Commissioner of Chota Nagpur, dated the 19th May, 1931, confirming the decision of Babu Narendra Nath Chakravarty, Subordinate Judge of Ranchi, dated the 28th September, 1929.

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